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Henry - for Appellants

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TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES.

No. ~~128.~~ 21

THE NEW ORLEANS CANAL AND BANKING COMPANY ET AL., APPELLANTS,

vs.

A. B. MONTGOMERY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

FILED OCTOBER 13, 1874.

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1 UNITED STATES OF AMERICA,
Southern District of Mississippi:

Circuit court of the United States, fifth judicial circuit.

At a special term of said court, held at the court-room thereof in the city of Jackson, on the 4th Monday, being the 26th day of January, A. D. 1874, pursuant to an order duly made at the November term thereof, A. D. 1873, there were present, the Hon. Robert A. Hill, district judge for Mississippi, F. Brannigan, United States attorney for the southern district of Mississippi, Leroy S. Brown, United States marshal for said district, and George T. Swann, clerk of said court.

2 THE NEW ORLEANS CANAL AND BANKING Company, the Union Bank of Louisiana, the Bank of Louisiana; William S. Pike, J. W. Lapeyre, and A. Brother, partners, under name of Pike, Lapeyre and Brother, and Mrs. C. Shaw, complainants,
vs.
A. B. MONTGOMERY, VICTOR MONTGOMERY, William B. Montgomery, and Davidella Montgomery, William L. Nugent, Wm. E. Yerger, Frank Valliant, assignee in bankruptcy of A. B. Montgomery, and A. B. Montgomery, as father of said Wm. T. and Davidella Montgomery, minors, defendants.
} No. N. S. 99.

Be it remembered that heretofore, to wit, on the 7th day of June, A. D. 1869, came the above-named complainants, by Messrs. H. F. Cook, and T. A. and M. Marshall, their solicitors, and filed in the office of the clerk of said circuit court of the United States for the southern district of Mississippi, their bill of complaint against the said above-named defendants, which said bill of complaint, together with the process, proceedings, orders, and decrees of said court in said cause, are in the words and figures following, to wit:

3 To the judges of the circuit court of the United States for the southern district of Mississippi, in chancery sitting:

The president, directors, and company of the New Orleans Canal and Banking Company, incorporated by the legislature of the State of Louisiana, and domiciled in said State; The Union Bank of Louisiana, incorporated by the legislature of the State of Louisiana, and domiciled in said State; The Bank of Louisiana, incorporated by the legislature of the State of Louisiana, and domiciled in said State; William S. Pike, J. W. Lapeyre, and A. Brother, citizens of the State of Louisiana, and composing the firm of Pike, Lapeyre and Brother; and Mrs. C. Shaw, a citizen of the State of Louisiana, brings this their bill of complaint against A. B. Montgomery, Victor Montgomery, William F. Montgomery, and Davidella Montgomery, William L. Nugent, and William E. Yerger, and Frank Valliant, assignee in bankruptcy of A. B. Montgomery, all citizens of the State of Mississippi, in the southern district thereof, defendants.

4 And thereupon your orators complain and say that on the 22nd day of May, 1866, the said A. B. Montgomery being indebted to

the late commercial firm of R. W. Estlin & Co., of the city of New Orleans, said firm being composed of said R. W. Estlin, Robert J. Black, Henry Thornhill, and Charles H. Estlin, all citizens of the State of Louisiana, in settlement of said debt, executed and delivered to said firm his sixty promissory notes, amounting in the aggregate to the sum of one hundred and fifty-eight thousand seven hundred and seventy-seven $\frac{55}{100}$ dollars; all of the said notes being dated at Greenville, May 22, 1866, and payable to his own order, and by him endorsed and bearing 6 per cent. interest from the first day of January, 1866. And your orators show that said notes were for various and different amounts and payable in a series of 1, 2, 3, 4, and 5 years, respectively, after said date, which will more particularly be shown by reference to Exhibit A, herewith filed and made a part of this bill.

And your orators show that to secure the payment of said notes
5 the *the* said A. B. Montgomery on the same day executed, in due and legal form, a deed of trust to said William L. Nugent and William G. Yerger, on certain real estate in the county of Washington and State of Mississippi, containing in the aggregate 3,067 acres, the particular numbers and description of which are fully set forth in said trust-deed herewith filed as Exhibit A, and is made a part of this bill; and your orators show that said deed of trust was duly stamped and acknowledged on the 24th day of May, 1866, and on the same day recorded in the probate clerk's office of said county, as will appear by the same, and to which reference is again made.

And your orator The New Orleans Canal and Banking Company shows that of said notes the said R. W. Estlin & Co., for value received, delivered to said bank the following: One for the sum of $2,446.36, payable one year after date, and one for the same amount payable two years after date; three for the sum of $2,446.37, each payable respectively at 3, 4, and 5 years after date, and five
6 notes for $5,000.00 each, and payable respectively at 1, 2, 3, 4, and 5 years after date. Said notes are herewith filed, as Exhibits B, C, D, E, F, G, H, I, J, K, and are made parts hereof.

And your orator The Union Bank of Louisiana shows that of said notes the said R. W. Estlin & Co., for value received, delivered to said bank the following: Five notes for the sum of $1,200 each, payable respectively at 1, 2, 3, 4, and 5 years after date. Said notes are herewith filed, as Exhibits L, M, N, O, and P, and are made parts hereof.

And your orator The Bank of Louisiana shows that of said notes the said R. W. Estlin & Co., for value received, delivered to said bank the following: Three notes for the sum of $6,200 each, payable respectively at 1, 4, and 5 years after date. Said notes are herewith filed, as Exhibits Q, R, and S, and are made parts hereof.

And your orators Pike, Lapeyre and Brother show that of said notes the said R. W. Estlin & Co., for value received, delivered to them the following: Two notes for $5,000 each, payable respectively at 4
7 and 5 years after date, and one for the *for the* sum of $4,012.96, payable 5 years after date. Said notes are herewith filed, as Exhibits T, U, and V, and are made parts hereof.

And your oratrix, Mrs. C. Shaw, shows that of said notes the said R. W. Estlin & Co., for value received, delivered to her the following: Four notes for $1,200 each, payable respectively at 1, 2, 3, and 4 years after date. Said notes are herewith filed, as Exhibits W, X, Y, and Z, and are made parts hereof.

And your orators aforesaid are not informed and cannot disclose the names of the parties to whom the said R. W. Estlin & Co. have deliv-

ered the other notes, as aforesaid, secured by said deed of trust; but they bring this suit on behalf of themselves, and all other parties holding the said notes who may choose to come in and take the benefit of the decree herein prayed to be made, and on the terms prescribed by said court.

And your orators further show that the said A. B. Montgomery, after the execution of said notes and deed of trust, to wit, on the 18th
8 day of February, 1868, on his own petition, was adjudicated a bankrupt by the district court of the United States for the southern district of Mississippi; and under said proceedings the said defendant F. Valliant, on the 19 day of May, 1868, was appointed the assignee of his estate, and is now acting as such under the orders of said court; all of which will appear by the records of said court, and to which reference is here made.

Your orators, further complaining, are informed, so believe, and state, that at the date of the execution of said deed of trust by the said A. B. Montgomery, the said R. W. Estlin, with whom the settlement of said firm-debt before referred to was made, was assured by said Montgomery that there were no prior liens or incumbrances on the lands conveyed in said trust-deed; and the said Estlin, after an examination of the records of deeds of said county of Washington, and finding that there were no prior liens or incumbrances thereon, received the said deed of trust on said lands as security for the payment of the notes therein specified, and immediately thereafter transferred to your orators
9 the notes hereinbefore specified as belonging to and held by them, respectively, and your orators aver and charge that neither the said R. W. Estlin or any member of said firm of R. W. Estlin & Co., nor your orators, or either of them, at the date of the execution of said deed of trust, or of the assignment of said notes to your orators as aforesaid, had any knowledge or notice, either legal or actual, of any lien or incumbrance on said lands, as, in fact, there were none of record in said county of Washington, as was shown by an inspection of the same, as before stated.

And your orators further show that on the 1st day of June, 1867, one Charles Bosley, a citizen of the State of Tennessee, filed his bill in said court against A. B. Montgomery, to foreclose a deed of trust on certain real estate in said county of Washington, but not the same embraced in the deed of trust to said R. W. Estlin & Co., and on the 6th day of November, 1867, obtained a final decree for the sum of $22,166.66, and one Alexander Yerger was substituted as trustee to sell the lands embraced therein, and subsequently an amended decree was made by said court authorizing said Yerger, trustee, to sell said lands for one-half
10 cash and one-half on twelve months' credit, the said original decree having directed and required him to sell the same for cash; that afterwards, on the 8th day of February, 1868, the said Yerger, trustee, sold said lands for cash to said Charles Bosley for the sum of $7,500, and that the deed therefor was duly executed and filed with his report of sale in said court on the 28th of March, 1868, all of which will more fully appear by the records of said court and to which reference is here made.

And your orators further show that the said Charles Bosley, on the 27th day of March, 1868, filed his bill in said court, against said A. B. Montgomery and Alexander Yerger, trustee as aforesaid, alledging that there was a mistake in the description of the lands embraced in the deed of trust to him from said Montgomery and also in the sale and deed to him by the said Yerger, trustee, and on the 8th day of July, 1868, a decree pro confesso was taken thereon against said Montgomery and

11 Yerger, and therein and thereby the said alleged mistake was ordered to be corrected so as to embrace the lands which had been conveyed by the said Montgomery in trust to said R. W. Estlin & Co., herein filed as Exhibit A, all of which will appear by the records of said court, and to which reference is here made.

Your orators aver that said last-named bill was filed in said court and all the proceedings had thereon after the said Yerger, trustee, had made sale of the lands named in the decree first rendered and subsequent to the filing of his report of said sale, and after the said A. B. Montgomery had been adjudicated a bankrupt as aforesaid and had ceased to have any legal interest in said lands, and that said proceedings in said court on said bill to correct said mistake was without notice to said F. Valliant, assignee as aforesaid or your orators or any other persons having any legal or equitable interest in said lands; and that for the want of said notice your orators are advised that said proceedings are void as to them and the said assignee and all others holding notes secured by

12 said trust-deed to said R. W. Estlin & Co., and that the said Bosley neither under the sale to him by the said Yerger, trustee, for the reasons before stated, nor under the proceedings under said bill, acquired any right or title to said lands embraced in said last-named trust-deed.

And your orators further show to the court that said Bosley on the 30th day of June, 1868, and before he had any pretense of title to said lands in said trust-deed to R. W. Estlin & Co., by deed of special warranty sold the same for the "expressed" consideration of fifteen thousand dollars to the defendants Victor Montgomery, William F. Montgomery, and Davidella Montgomery, who are the children of said A. B. Montgomery. Said deed was duly recorded in the probate clerk's office of Washington County, and a copy of the same is herewith filed as Exhibit AA, and is made a part of this bill.

Your orators are informed, so believe, and charge that the said A. B. Montgomery was not indebted to said Charles Bosley at the date of

13 the filing of said bill of June 1, 1867, in said court, before referred to, or if there was any indebtedness, the said Bosley had agreed to release all claims or pretended claim on his property in the State of Mississippi, and that the sale of the land as aforesaid under said decree of foreclosure and the bill subsequently filed, and the proceedings had thereon in said court to correct a pretended mistake in the description of the lands conveyed as before stated, was done by collusion and combination by the said Bosley and Montgomery to defraud your orators and those holding claims under said trust-deed to R. W. Estlin & Co., and that the said pretended sale of said lands by said Bosley to said Victor Montgomery was a part of said fraudulent collusion and combination, and that said Victor was cognizant of and participated in the same by said pretended purchase, and is now in possession thereof under the said sale.

Your orators are further informed, and so believe and state, that the said A. B. Montgomery owned a large body of land and lots around and in the city of Nashville, in the State of Tennessee, and on the

14 1st day of February, 1867, he conveyed the same to his nephew, J. W. Montgomery; that at the date of said conveyance it was arranged and agreed between said Bosley and said A. B. Montgomery and J. W. Montgomery, that the debt due from said A. B. Montgomery to said Bosley should be assumed and paid by said J. W. Montgomery in part satisfaction of the purchase of said Tennessee property; that said Bosley had a lien on said property as well as on property in

Mississippi *in Mississippi*, and the two debts were consolidated, by which said Bosley accepted said J. W. Montgomery as his debtor, retaining his lien for the whole debt on said Tennessee property, and released said A. B. Montgomery from said debt and the lien on his Misisippi lands; and your orators further aver and charge that by said arrangement and agreement the debt of said A. B. Montgomery to said Bosley was satisfied, and that at the time of the filing of said bills in said court by said Bosley, hereinbefore referred to, said A. B. Montgomery was not indebted to said Bosley whatever, but that said bills were filed in the name of said Bosley with his full knowledge and
15 consent, and to carry out the fraudulent collusion and combination between said parties and said J. W. Montgomery; that as a part of said fraudulent combination it was agreed that said Bosley should become the purchaser of said lands under the decree of sale, and then convey them to the children of said A. B. Montgomery, which was done accordingly at the times and in the manner as hereinbefore stated; that the said Victor was a party to said fraudulent transaction and had full knowledge of the same; and the said William F. and Davidella, being minors, have, so far as they are capable of doing so, connived in the same fraudulent transaction, as they are now enjoying the profits and advantages secured thereby.

And your orators further show that said lands embraced 3,067 acres, and is one of the plantations of said A. B. Montgomery in said county of Washington, known as the "Swiftwater" place; the said plantation composing 2,000 acres of clear land, and on which was grown and raised annually prior to the war from 1,800 to 2,000 bales of cot-
16 ton, and almost entirely protected and free from the overflows of the Mississippi River. The buildings thereon were of the most costly and substantial character, consisting of steam gin, mill, and fixtures of the most approved kind, and quarters for the slaves in sufficient numbers to cultivate a plantation of that size; that the said A. B. Montgomery resided on said plantation, and that the residence and other buildings appurtenant to the family mansion were on a scale commensurate with his great wealth and social position; that the said plantation being remote from the river did not suffer from the ravages of the war, and at the time of said sale was in complete order and condition. And your orators, referring to the dates and amounts before stated in reference to the sale of said plantation, aver and charge that the said fraudulent collusion and combination between said parties is made apparent when it is shown that said lands and plantation was bid in by the said Bosley at the sum of $7,500, and in few months thereafter said Bosley reconveyed the same to the children of said
17 Montgomery for the sum of $15,000, payable in the manner as stated in his said deed to them.

And your orators aver and charge that the said children of said A. B. Montgomery had no private estate or income separate from their father, and if any portion of said sum was paid to said Bosley it was advanced and paid either directly or indirectly through him, and that in the mean time no change took place in the ownership, possession, or control of said plantation.

And your orators aver and charge that said A. B. Montgomery, though not now vested with the legal title to said lands, is in fact as much the actual owner thereof as he had ever been in the days of his prosperity and before any change of legal title was made, and makes use of his son, the said Victor, in carrying out his purposes to defraud your orators of their just rights.

He has the entire control and management of said plantation, and in every way exercises the absolute ownership thereof through the apparent deference paid to his age, experience, and parental authority.

18 And your orators aver and charge that by said means the family arrangement of said parties to secure said lands to said A. B. Montgomery and his children has been effected, and he is now, in the name of his son Victor, cultivating said plantation and appropriating the rents and profits to his own use, in fraud of the rights of your orators.

And your orators aver that the notes held by them, respectively, as hereinbefore referred to, and now due, are wholly unpaid, and they are informed, believe, and state that none of the notes secured to be paid by the deed of trust to said R. W. Estlin & Co., and now due, have been paid; and your orator severally offer hereby, on the final decree hereinafter prayed to be made, to make a rebate of interest on the notes held by them respectively, which are not due at the date of said final decree as authorized by the bankrupt act; and your orators are advised that the same terms may be imposed by said court on all other parties holding notes not due, secured under said trust-deed, before they will be allowed to claim the benefit of said decree.

19 To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed, and may, upon their several and respective corporal oaths, and according to the best and utmost of their several and respective knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to such of the several interrogatories hereinafter numbered and set forth, as by the note hereunder written, they are respectively required to answer, that is to say:

1. State the number of acres of land you sold to your nephew, J. W. Montgomery, situated in or near the city of Nashville, State of Tennessee, its quality and condition and value at the date of said sale.

2. State the exact date of sale, and the amount was paid and agreed to be paid for the same.

3. How much did you owe said Charles Bosley at the date of this sale? If he had a mortgage or lien on this property, state when it was made and recorded, for what amount, how much had been paid, and how much was still due.

4. Did you and said Bosley not have a settlement on or about

20 the time of this sale; and was not the terms and conditions of sale, that your nephew should pay this debt as part of the price of said purchase?

5. Did not said J. W. Montgomery pay or advance to said Bosley the cash consideration stated in the deed from said Bosley to Victor Montgomery, and did he not get credit on his purchase from you to that amount, and Bosley receive a credit for the same sum on his debt? If not, from whom, when, and how did he, Victor Montgomery, get the money to pay said Bosley?

6. Has not said J. W. Montgomery failed to comply with his agreement, and was not that the reason Victor Montgomery was authorized to raise money for said Bosley by a mortgage to Robert Allison of the lands conveyed by said Bosley, as authorised in his deed to Victor Montgomery?

7. Who negotioted said loan? Where does Robert Allison live, and in what business is he engaged? Is not said J. W. Montgomery in some way responsible for the debt, and how?

8. Who has the charge and management of the plantation and lands conveyed in the deed from said Bosley to Victor Montgomery?

21 How much is in cultivation, and how much, if any, is rented out; to whom, and at what price?

9. Who owns the stock and farming implements on said place; when and from whom was the same purchased, and who furnished the money therefor; is any portion of the same now in use which was on said place on the 18 day of February, 1868? If so, state what it is.

10. Is not said A. B. Montgomery and his family still in the use and occupancy of said place, and is not his authority as absolute now as when he was owner of the legal title?

11. What separate estate did the said Victor, William, and Davidella own at the date of said Bosley deed to them, and how, when, and from whom was it derived?

12. If the facts in reference to the agreement between said Bosley, William F. Mon'gomery, and A. B. Montgomery and the children of the latter are not as stated in this bill state fully what was the agreement of said parties, when made, and how far the same has been carried into effect.

And on final hearing your orators pray that your honors will or-
22 der and decree that said deed from Charles Bosley to said Victor Montgomery, filed herein as Exhibit AA may be declared fraudulent and void, and that the same may be cancelled; that the debt claimed to be due to said Bosley from said A. B. Montgomery at the date of filing his said bill first herein referred to had been paid, or assumed to be paid, by said J. W. Montgomery, and that said A. B. Montgomery had been released therefrom.

But if your orators should be mistaken in this, then your orators pray that your honors will order and decree that the said Charles Bosley had no lien or deed of trust on the lands, or any part thereof, embraced in the deed of trusts to said R. W. Estlin & Co., filed as exhibit herein, of record in said county of Washington, at the date thereof; and that your orators and the said R. W. Estlin & Co., and the others claiming under said deed of trust had no notice of the said pretended deed of trust of said Bosley on the same lands; and that your honors will order and decree that the bill filed by said Bosley vs. said A. B. Montgomery and Alexander Yerger in said court, and the decree taken pro confesso thereon, hereinbefore particularly referred to your orator, or
23 the said firm of R. W. Estlin & Co., or any other parties holding the notes secured by the deed of trust to said R. W. Estlin & Co. or the said F. Valliant, assignee, or any other person having any legal or equitable interest in said lands which by said decree pro confesso were subjected and held liable to said claim of said Bosley; and that for the want of said notice the said decree is illegal and void as to your orators and the said F. Valliant, assignee, and all others holding the notes secured by the deed of trust to said R. W. Estlin & Co.; and that the said Bosley, under and by said decree pro confesso, acquired no title to said lands, and that his said deed to said Victor Montgomery was illegal and void, and that the same may be cancelled. And your orators further pray that the said W. L. Nugent and W. G. Yerger, trustees in the deed of trust to said R. W. Estlin & Co., may be removed, and that said F. Valliant, assignee, may be ordered and directed to sell said lands and to divide the proceeds thereof to the parties holding the notes secured under said deed of trust, under the orders and directions of the district court of the United States for the southern district of Mississippi sitting in bankruptcy.

24 And your orators further pray that said F. Valliant, assignee as aforesaid, may be ordered and directed to take the immediate

possession of said lands and to receive the rents and profits thereof, and to hold the same subject to the further orders of said court, and that the said A. B. Montgomery and Victor Montgomery be ordered and required to deliver up the immediate possession of said lands to said F. Valliant, assignee as aforesaid, under such penalties as may be prescribed by your honors. If mistaken in the relief prayed for, your orators then pray that the said assignee in bankruptcy may be permitted and required to redeem said lands, on such terms and conditions as may be prescribed by your honor, for the benefit of your orators and all others claiming under said mortgage-deed to said R. W. Estlin & Co.; and your orators pray for such other and further or different relief as they may be entitled to in the premises.

And your orators pray that the said named parties, A. B. Montgomery, Victor Montgomery, William F. Montgomery, Davidella Mont-
25 gomery, William L. Nugent, William G. Yerger, and F. Valliant, may be made parties defendants to this bill, and that process of subpœna may issue for them according to law, and for the said A. B. Montgomery as the father of said minor defendants, William F. Montgomery and Davidella Montgomery, commanding them, and each of them, to be and appear before your honors in said court, at a day to be therein specified, then and there to answer said bill and to stand by and perform the orders and decrees therein as to your honors shall seem meet; and your orators will ever pray, &c.

H. F. COOK.

T. A. and M. MARSHALL, *Solicitors.*

The defendants A. B. Montgomery and Victor Montgomery, only, are required to answer the foregoing interrogatories.

Said bill was endorsed:
I am security for costs in this cause.

H. F. COOK.

JUNE 5, 1869.

Filed with Exh's A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, R, S, T, U, V, W, X, Y, Z, and AA. 7th June, 1869. and spa. to August rules, 1869. Issued same day. Geo. T. Swann, clerk.

26 *Exhibit A to bill of complaint.*

This indenture, made and entered into this 22nd day of May, A. D. 1866, between Alexander B. Montgomery, of the first part; William L. Nugent and William G. Yerger, of the second part; and Robert W. Estlin, Robert Y. Black, Henry Thornhill, and Charles H. Estlin, late commercial partners under the firm-name of Ro. W. Estlin & Co., now in liquidation, all of the city of New Orleans, State of Louisiana, of the third part, witnesseth: That the party of the first part, for and in consideration of the sum of ten dollars to him in hand paid, the receipt of which is hereby acknowledged, and for the consideration hereinafter mentioned, hath granted, bargained, sold, and by these presents doth grant, bargain, sell to the parties of the second part, those certain tracts or parcels of land lying, being, and situate in the county of Washington, Mississippi, and designated as follows, to wit, *to wit:* The south half of section nineteen, township eighteen, range seven west, containing 315 acres; an undivided half of the east half and east half of the northwest quarter of section eight, township seventeen, range eight west, containing

27 two hundred acres; the southwest quarter of section nine, same township and range, containing 162 acres; in section ten, same township and range, 194 acres; in south half section eleven, same township and range, 109 acres; all section twelve, same township and range, containing 647 acres; all section thirteen, same township and range, containing 640 acres; all section fourteen, same township and range, containing 640 acres; southwest quarter section fifteen, same township and range, containing 160 acres—in the aggregate, 3,067 acres: To have and to hold unto the said Nugent and Yerger, parties of the second part, and to their heirs, forever: Provided, however, and this indenture is in trust and upon the condition following, to wit: That whereas the party of the first part is justly and truly indebted to the said parties of the third part for money advanced and loaned, as evidenced by sixty promissory notes, amounting in the aggregate to the sum of one hundred and fifty-eight thousand seven hundred and seventy-seven $\frac{55}{100}$ dollars, executed by the said party of the first part to his own order, and by him endorsed, all dated Greenville, May 22d, 1866, and bearing in-
28 terest at the rate of six per cent. per annum from the first day of January, 1866, till final payment, and payable at the counting-room of Estlin & Co., in New Orleans, La., as follows: five for the sum of twelve hundred dollars each, payable one year after date; five for the sum of twelve hundred dollars each, payable two years after date; five for the sum of twelve hundred dollars each, payable three years after date; five for the sum of twelve hundred dollars each, payable four years after date; and five for the sum of twelve hundred dollars each, payable five years after date; five for the sum of sixty-two hundred dollars each, payable respectively at one, two, three, four, and five years after date; two for the sum of five thousand dollars each, payable one year after date; two for the sum of five thousand dollars each, payable two years after date; two for five thousand dollars each, payable three years after date; two for five thousand dollars each, payable four years after date; two for five thousand dollars each, payable five years after date; four for the sum of four thousand and twelve
29 $\frac{95}{100}$ dollars each, payable respectively at one, two, three, and four years after date; one for four thousand and twelve and $\frac{96}{100}$ dollars, payable five years after date; four for the sum of eighteen hundred and ninety-six $\frac{19}{100}$ dollars, payable at one, two, three, and four years after date; one for eighteen hundred and ninety-six $\frac{20}{100}$ dollars, payable five years after date; two for twenty-four hundred and forty-six $\frac{36}{100}$ dollars, payable respectively in one and two years after date; and three for twenty-four hundred and forty-six $\frac{37}{100}$ dollars each, payable respectively at three, four, and five years after date—all of which said notes are paraphed to identify them with this deed. Now, if the said party of the first part shall well and truly pay off and discharge the said several promissory notes as they severally become due and payable, then this indenture to be void; but in case he fail therein, then the said parties of the second part are authorized and empowered, after five months next subsequent to such default, at the request of the holders of *of* said notes, or any of them, and upon giving thirty days' pre-
30 vious notice in five public places in said county of the time and place of sale, to sell the lands aforesaid for cash, or such part thereof as may be necessary to pay the notes due and unpaid and the expenses incident to said sale, and execute proper deeds of conveyance to the purchasers, and so to continue to do so from time to time as said notes respectively mature and are not paid.

In testimony whereof the parties of the first and second parts have

possession of said lands and to receive the rents and profits thereof, and to hold the same subject to the further orders of said court, and that the said A. B. Montgomery and Victor Montgomery be ordered and required to deliver up the immediate possession of said lands to said F. Valliant, assignee as aforesaid, under such penalties as may be prescribed by your honors. If mistaken in the relief prayed for, your orators then pray that the said assignee in bankruptcy may be permitted and required to redeem said lands, on such terms and conditions as may be prescribed by your honor, for the benefit of your orators and all others claiming under said mortgage-deed to said R. W. Estlin & Co.; and your orators pray for such other and further or different relief as they may be entitled to in the premises.

And your orators pray that the said named parties, A. B. Montgomery, Victor Montgomery, William F. Montgomery, Davidella Mont-
25 gomery, William L. Nugent, William G. Yerger, and F. Valliant, may be made parties defendants to this bill, and that process of subpœna may issue for them according to law, and for the said A. B. Montgomery as the father of said minor defendants, William F. Montgomery and Davidella Montgomery, commanding them, and each of them, to be and appear before your honors in said court, at a day to be therein specified, then and there to answer said bill and to stand by and perform the orders and decrees therein as to your honors shall seem meet; and your orators will ever pray, &c.

H. F. COOK.

T. A. and M. MARSHALL, *Solicitors.*

The defendants A. B. Montgomery and Victor Montgomery, only, are required to answer the foregoing interrogatories.

Said bill was endorsed:
I am security for costs in this cause.

H. F. COOK.

JUNE 5, 1869.

Filed with Exh's A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, R, S, T, U, V, W, X, Y, Z, and AA. 7th June, 1869, and spa. to August rules, 1869. Issued same day. Geo. T. Swann, clerk.

26 *Exhibit A to bill of complaint.*

This indenture, made and entered into this 22nd day of May, A. D. 1866, between Alexander B. Montgomery, of the first part; William L. Nugent and William G. Yerger, of the second part; and Robert W. Estlin, Robert Y. Black, Henry Thornhill, and Charles H. Estlin, late commercial partners under the firm-name of Ro. W. Estlin & Co., now in liquidation, all of the city of New Orleans, State of Louisiana, of the third part, witnesseth: That the party of the first part, for and in consideration of the sum of ten dollars to him in hand paid, the receipt of which is hereby acknowledged, and for the consideration hereinafter mentioned, hath granted, bargained, sold, and by these presents doth grant, bargain, sell to the parties of the second part, those certain tracts or parcels of land lying, being, and situate in the county of Washington, Mississippi, and designated as follows, to wit, *to wit:* The south half of section nineteen, township eighteen, range seven west, containing 315 acres; an undivided half of the east half and east half of the northwest quarter of section eight, township seventeen, range eight west, containing

27 two hundred acres; the southwest quarter of section nine, same township and range, containing 162 acres; in section ten, same township and range, 194 acres; in south half section eleven, same township and range, 109 acres; all section twelve, same township and range, containing 647 acres; all section thirteen, same township and range, containing 640 acres; all section fourteen, same township and range, containing 640 acres; southwest quarter section fifteen, same township and range, containing 160 acres—in the aggregate, 3,067 acres: To have and to hold unto the said Nugent and Yerger, parties of the second part, and to their heirs, forever: Provided, however, and this indenture is in trust and upon the condition following, to wit: That whereas the party of the first part is justly and truly indebted to the said parties of the third part for money advanced and loaned, as evidenced by sixty promissory notes, amounting in the aggregate to the sum of one hundred and fifty-eight thousand seven hundred and seventy-seven $\frac{55}{100}$ dollars, executed by the said party of the first part to his own order, and by him endorsed, all dated Greenville, May 22d, 1866, and bearing in-
28 terest at the rate of six per cent. per annum from the first day of January, 1866, till final payment, and payable at the counting-room of Estlin & Co., in New Orleans, La., as follows: five for the sum of twelve hundred dollars each, payable one year after date; five for the sum of twelve hundred dollars each, payable two years after date; five for the sum of twelve hundred dollars each, payable three years after date; five for the sum of twelve hundred dollars each, payable four years after date; and five for the sum of twelve hundred dollars each, payable five years after date; five for the sum of sixty-two hundred dollars each, payable respectively at one, two, three, four, and five years after date; two for the sum of five thousand dollars each, payable one year after date; two for the sum of five thousand dollars each, payable two years after date; two for five thousand dollars each, payable three years after date; two for five thousand dollars each, payable four years after date; two for five thousand dollars each, payable five years after date; four for the sum of four thousand and twelve
29 $\frac{95}{100}$ dollars each, payable respectively at one, two, three, and four years after date; one for four thousand and twelve and $\frac{96}{100}$ dollars, payable five years after date; four for the sum of eighteen hundred and ninety-six $\frac{19}{100}$ dollars, payable at one, two, three, and four years after date; one for eighteen hundred and ninety-six $\frac{20}{100}$ dollars, payable five years after date; two for twenty-four hundred and forty-six $\frac{36}{100}$ dollars, payable respectively in one and two years after date; and three for twenty-four hundred and forty-six $\frac{37}{100}$ dollars each, payable respectively at three, four, and five years after date—all of which said notes are paraphed to identify them with this deed. Now, if the said party of the first part shall well and truly pay off and discharge the said several promissory notes as they severally become due and payable, then this indenture to be void; but in case he fail therein, then the said parties of the second part are authorized and empowered, after five months next subsequent to such default, at the request of the holders of *of* said notes, or any of them, and upon giving thirty days' pre-
30 vious notice in five public places in said county of the time and place of sale, to sell the lands aforesaid for cash, or such part thereof as may be necessary to pay the notes due and unpaid and the expenses incident to said sale, and execute proper deeds of conveyance to the purchasers, and so to continue to do so from time to time as said notes respectively mature and are not paid.

In testimony whereof the parties of the first and second parts have

hereto set their hands and affixed their seals the day and year first above written.

A. B. MONTGOMERY. [SEAL.]
WM. L. NUGENT. [SEAL.]
WM. G. YERGER. [SEAL.]

$159.00 int.-rev. stamps affixed and cancelled.—Clk.]

The words "for cash" and "and the expenses incident to said sale' interlined before signing.

STATE OF MISSISSIPPI,
Washington County:

Personally appeared before me, clerk of the probate court in and for said county, Alexander B. Montgomery, William L. Nugent, and William G. Yerger, who acknowledged that they signed, sealed, and delivered the foregoing deed, on the day and year therein named, as their act and deed, and for the uses and purposes therein mentioned.

31 Given under my hand and seal of office this 24th day of May, A. D. 1866.

[L. S.] W. A. HAYCRAFT, *Clk.*
By W. R. TRIGG, *D. C.*

STATE OF MISSISSIPPI,
Washington County:

I, W. A. Haycraft, clerk of the probate court of said county, do certify that the foregoing deed, having revenue stamps of the value of one hundred and fifty-nine dollars thereon, was filed for record in my office May 24th, 1866, and same day recorded in book S, pages 585 and 586.

Given under my hand and seal of office this May 24th, A. D. 1866.

[L. S.] W. A. HAYCRAFT, *Clerk.*

STATE OF MISSISSIPPI,
Washington County:

I, William A. Haycraft, clerk of the probate court of said county, do certify that there is no other mortgage or deed of trust on record to any of the land described in the deed of trust from A. B. Montgomery to Nugent and Yerger, trustees, to which this certificate is attached.

Given under my hand and official seal this 24th day of May, A. D. 1866.

[L. S.] W. A. HAYCRAFT, *Clerk.*

[Five-cent int.-rev. stamp.]

(Endorsed:) Exhibit A. Filed 7 June, 1869. G. T. Swann, clk.

32 *Exhibits B, C, D, E, F, G, H, I, J, K to original bill of complaint.*

EXHIBIT B.

$2,446.36.] GREENVILLE, *May* 22, 1866.

One year after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twenty-four hundred and forty-six $\frac{36}{100}$ dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

10061.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me, this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

C.

$2,446.36.] GREENVILLE, *May* 22, 1866.

Two years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twenty-four hundred and forty-six $\frac{36}{100}$ dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

10062.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

33 D.

$2,446.37.] GREENVILLE, *May* 22, 1866.

Three years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twenty-four hundred and forty-six $\frac{37}{100}$ dollars, for value received, to bear interest from first of Jan'y, 1866, at the rate of six per cent. per annum till final payment.

10063.] A. B MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

E.

$2,446.37.] GREENVILLE, *May* 22, 1866.

Four years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twenty-four hundred and forty-six $\frac{37}{100}$ dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

10064.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

34 F.

$2,446.37.] GREENVILLE, *May* 22, 1866.

Four years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twenty-four

hereto set their hands and affixed their seals the day and year first above written.

A. B. MONTGOMERY. [SEAL.]
WM. L. NUGENT. [SEAL.]
WM. G. YERGER. [SEAL.]

$159.00 int.-rev. stamps affixed and cancelled.—Clk.]

The words "for cash" and "and the expenses incident to said sale' interlined before signing.

STATE OF MISSISSIPPI,
Washington County:

Personally appeared before me, clerk of the probate court in and for said county, Alexander B. Montgomery, William L. Nugent, and William G. Yerger, who acknowledged that they signed, sealed, and delivered the foregoing deed, on the day and year therein named, as their act and deed, and for the uses and purposes therein mentioned.

31 Given under my hand and seal of office this 24th day of May, A. D. 1866.

[L. S.] W. A. HAYCRAFT, *Clk.*
By W. R. TRIGG, *D. C.*

STATE OF MISSISSIPPI,
Washington County:

I, W. A. Haycraft, clerk of the probate court of said county, do certify that the foregoing deed, having revenue stamps of the value of one hundred and fifty-nine dollars thereon, was filed for record in my office May 24th, 1866, and same day recorded in book S, pages 585 and 586.

Given under my hand and seal of office this May 24th, A. D. 1866.

[L. S.] W. A. HAYCRAFT, *Clerk.*

STATE OF MISSISSIPPI,
Washington County:

I, William A. Haycraft, clerk of the probate court of said county, do certify that there is no other mortgage or deed of trust on record to any of the land described in the deed of trust from A. B. Montgomery to Nugent and Yerger, trustees, to which this certificate is attached.

Given under my hand and official seal this 24th day of May, A. D. 1866.

[L. S.] W. A. HAYCRAFT, *Clerk.*

[Five-cent int.-rev. stamp.]

(Endorsed:) Exhibit A. Filed 7 June, 1869. G. T. Swann, clk.

32 *Exhibits B, C, D, E, F, G, H, I, J, K to original bill of complaint.*

EXHIBIT B.

$2,446.36.] GREENVILLE, *May* 22, 1866.

One year after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twenty-four hundred and forty-six $\frac{36}{100}$ dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

10061.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me, this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

C.

$2,446.36.] GREENVILLE, *May* 22, 1866.

Two years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twenty-four hundred and forty-six $\frac{36}{100}$ dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

10062.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

33

D.

$2,446.37.] GREENVILLE, *May* 22, 1866.

Three years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twenty-four hundred and forty-six $\frac{37}{100}$ dollars, for value received, to bear interest from first of Jan'y, 1866, at the rate of six per cent. per annum till final payment.

10063.] A. B MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

E.

$2,446.37.] GREENVILLE, *May* 22, 1866.

Four years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twenty-four hundred and forty-six $\frac{37}{100}$ dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

10064.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

34

F.

$2,446.37.] GREENVILLE, *May* 22, 1866.

Four years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twenty-four

hundred and forty-six $\frac{37}{100}$ dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

10065.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

G.

$5,000.] GREENVILLE, *May 22d*, 1866.

One year after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, five thousand dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

R. 912.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

35 H.

$5,000.] GREENVILLE, *May 22d*, 1866.

Two years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, five thousand dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

R. 914.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

I.

$5,000.] GREENVILLE, *May 22d*, 1866.

Three years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, five thousand dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

R. 917.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

36 J.

$5,000.] GREENVILLE, *May 22d*, 1866.

Four years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, five thousand dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

R. 921.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)

Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

K.

$5,000.] GREENVILLE, *May 22d*, 1866.

Five years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, five thousand dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

R. 924.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)

Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

Filed with bill 7 June, 1869.

GEO. T. SWANN, *Clk.*

37 *Exhibits L, M, N, O, and P to the original bill of complaint.*

L.

$1,200.] GREENVILLE, *May 22d*, 1866.

Two years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

E.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)

Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

M.

$1,200.] GREENVILLE, *May 22*, 1866.

Four years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

D.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

38 N.

$1,200.] GREENVILLE, *May* 22, 1866.

Five years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

C.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

O.

$1,200.] GREENVILLE, *May*, 22, 1866.

One year after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

B.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

39 P.

$1,200.] GREENVILLE, *May 22d*, 1866.

Three years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

Filed 7th June, 1867.

GEO. T. SWANN, *Clk.*

Exhibits Q, R, and S to original bill of complaint, to wit:

Q.

$6,200.] GREENVILLE, *May* 22, 1866.

Five years after date I promise to pay to the order of myself, at the

counting-house of Estlin & Co., in the city of New Orleans, sixty-two hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

40 R.

$6,200.] GREENVILLE, *May* 22, 1866.

One year after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, sixty-two hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

S.

$6,200.] GREENVILLE, *May* 22, 1866.

Four years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, sixty-two hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

Filed with bill 7 June, '69.

GEO. T. SWANN, *Clk.*

41 *Exhibits T, U, and V to the original bill of complaint, to wit:*

T.

$5,000.] GREENVILLE, *May* 22*d*, 1866.

Five years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, five thousand dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

R. 923.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

U.

$5,000.] GREENVILLE, *May* 22, 1866.

Four years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, five thousand dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

R. 920.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

42 V.

$4,012.96.] MAY 22, 1866.

Five years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, four thousand and twelve $\frac{96}{100}$ dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

R. 925.] A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

Filed with bill 7 June, 1869.

G. T. SWANN, *Clk.*

Exhibits W, X, Y, and Z to the original bill of complaint, to wit:

W.

$1,200.] GREENVILLE, *May* 22, 1866.

One year after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

43 X.

$1,200.] GREENVILLE, *May* 22, 1866.

Two years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

Y.

$1,200.] GREENVILLE, *May* 22, 1866.

Three years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

44 Z.

$1,200.] GREENVILLE, *May* 22, 1866.

Four years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

(Written across the face:)
Secured by deed of trust, duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

(Endorsed:) A. B. Montgomery.

Filed with bill June 7, 1869.

GEO. T. SWANN, *Clk.*

Exhibit AA, to the original bill of complaint, to wit:

This indenture, made and entered into this thirtieth day of June, A. D. 1868, between Charles Bosely and Eliza A. Bosely, of Nashville, Tennessee, of the first part, and Victor Montgomery, of Washington County, Mississippi, of the second part, witnesseth that the parties of the first part, for and in consideration of the sum of fifteen thousand dollars to

them in hand paid, the receipt of which is hereby acknowledged, have bargained, sold, aliened, and conveyed, and by these presents do
45 grant, bargain, sell, and convey unto the party of the second part all their right, title, and interest which they have in and to those certain tracts or parcels of land lying, being, and situate in the said county of Washington, known as the "Swiftwater" plantation, and designated as follows, to wit: The southwest quarter of section nine, township seventeen, range eight west, 162 acres; in south half section ten, same township and range, 194 acres; in south half section eleven, same township and range, 109 acres; all section twelve, same township and range, 647 acres; all section thirteen, same township and range, 640 acres; all section fourteen, same township and range, 640; and southwest quarter section fifteen, same township and range, 160 acres; containing, in the aggregate, 2,552, more or less: To have and to hold unto the said Victor Montgomery and his heirs, in trust, however, for the use as well of himself as of his brother and sister, Wm. F. Montgomery and Davidella Montgomery, as tenants in common, share and share alike, with full power of partition or sale, as may hereafter be agreed
46 upon between him and them; and also with full power to said Victor Montgomery to execute a mortgage on said land to Robert Allison to him for ten thousand four hundred and twenty-seven dollars and seventy cents, the amount of money advanced by him for the consideration of this deed; and said Victor Montgomery shall have power to bind himself and brother and sister in said mortgage. The said party of the first part does not warrant the title to said land against any person but themselves and those claiming under them.

In testimony whereof the parties of the first part have hereunto set their hands and affixed their seals the day and year first above written.

CHARLES BOSELEY. [SEAL.]
ELIZA A. BOSELEY. [SEAL.]

STATE OF TENNESSEE,
Davidson County:

Personally appeared before me, P. P. Peck, a commissioner in and for the State of Tennessee, duly commissioned and authorized by the governor of the State of Mississippi to take acknowledgments and proof of deeds and other instruments of writing to be used or recorded in the said State of Mississippi, the above-named Charles Boseley and his
47 wife, Eliza A. Bosley, and severally acknowledged the foregoing deed to be their voluntary act and deed for the use and purposes therein mentioned; and the said Eliza A. Bosley did moreover, on a private examination made of her by me, apart from her husband, acknowledged that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion.

In testimony whereof I have hereunto affixed my signature and official seal of office at my office at Nashville, the day and year last above written.

[L. S.] P. P. PECK,
Commissioner, &c.

STATE OF MISSISSIPPI,
Washington County:

I, John Fawn, clerk of the probate court in and for said county, do hereby certify that the foregoing instrument of writing, having U. S. revenue-stamps to the value of fifteen dollars thereon, was filed in my office for record on the 6th day of July, A. D. 1868, and this day duly recorded in book T, pages 453 and 454.

48 Given under my hand and official seal this 7th day of July, A. D. 1868.

[L. S.] JNO. FAWN, *Clerk.*

STATE OF MISSISSIPPI,
Washington County:

I, Jno. Fawn, clerk of the probate court in and for said county, do hereby certify that the foregoing is a full, true, and correct copy of the original instrument, as the same appears and remains on file in my office.

In testimony whereof I have hereunto affixed my hand and the seal of said court this 29th day of March, A. D. 1869.

[L. S.] JNO. FAWN, *Clerk.*

Filed with bill 7 June, 1869.

G. T. SWANN, *Clk.*

And upon filing said bill of complaint and exhibits, a subpœna was issued in this cause by the clerk of said court, and the same with the returns and endorsements thereon is as follows, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi, sc:

The President of the United States to the marshal of the southern district of Mississippi, greeting:

49 You are hereby commanded, without delay, to summon A. B. Montgomery, Victor Montgomery, William F. Montgomery, and Davidella Montgomery, William L. Nugent, William E. Yerger, and Frank Valliant, assignee in bankruptcy of A. B. Montgomery, and A. B. Montgomery, as father of said William F. Montgomery, and Davidella Montgomery, who are minors, residents of the southern district of Mississippi, and citizens of the State of Mississippi, to appear before the circuit court of the United States for the southern district of Mississippi, at the city of Jackson, at rules, to be holden in the clerk's office of said court, on the first Monday in August next, to answer a bill in equity, exhibited against them by the president, directors, and company of the New Orleans Canal and Banking Company, incorporated by the legislature of the State of Louisiana, and domiciled in said State; the Union Bank of Louisiana, incorporated by the legislature of the State of Louisiana, and domiciled in said State; the Bank of Louisiana, incorporated by the legislature of the State of Louisiana, and

50 domiciled in said State; William S. Pike, J. W. Lapeyre, and A. Brother, citizens of the State of Louisiana, and composing the firm of Pike, Lapeyre and Brother, and Mrs. C. Shaw, a citizen of the State of Louisiana; and unless they shall enter their appearances therein, in the clerk's office aforesaid, on or before the time specified above, the said bill will be taken for confessed. And have then there this writ, and how you have executed the same.

Witness the Honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, and the seal of our said circuit court, this 7th day of June, A. D. 1869, and in the 93d year of the Independence of the United States of America.

[L. S.] GEO. T. SWANN, *Clerk.*

Marshal's returns.

Received June 8th, 1869.

E. A. PEYTON,
U. S. Marshal.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

U. S. MARSHAL'S OFFICE.

I hereby nominate and appoint Henry Smith my special deputy, to execute and return the within process according to law.

Witness my hand and seal this 8th day of June, 1869.

E. A. PEYTON, [SEAL.]
U. S. Marshal Southern District of Mississippi.

51 Served the within summons by reading the same to the within-named A. B. Montgomery, Victor Montgomery, Davidella Montgomery, William L. Nugent, Wm. G. Yerger, and Frank Valliant, and by delivering to each of the above named a true copy of the same. William F. Montgomery is now absent from his residence and has been for some time. I left a copy of the within summons with Doctor N. J. W. Wortham, of lawful age, at the residence of the said William F. Montgomery, Greenville, Washington County, Mississippi, this 18th day of June, A. D. 1869.

E. A. PEYTON,
U. S. Marshal.
By HENRY SMITH,
Deputy U. S. Marshal.

And on the 2nd day of August, 1869, the appearance of defendants, A. B. Montgomery, Victor Montgomery, W. L. Nugent, and W. G. Yerger, was entered as follows:

Circuit court United States, southern district Mississippi.

NEW ORLEANS CANAL AND BANKING CO. ET AL.
vs.
A. B. MONTGOMERY ET AL. } No. 99, N. S.

52 The defendants, A. B. Montgomery, Victor Montgomery, William L. Nugent, and William G. Yerger, by their solicitors, W. and J. R. Yerger, now come and enter their appearance herein.

W. AND J. R. YERGER.

Ent'd Aug't 2d, 1869.

GEO. T. SWANN, *Clk.*

And on the 14th day of August, 1869, came the said defendant A. B. Montgomery, by his solicitors, and filed his answer to the bill of complaint herein, as follows, to wit:

Answer of A. B. Montgomery.

To the honorable the judge of the circuit court of the United States, sitting in equity, for the southern district of Mississippi:

The separate answer of A. B. Montgomery to the bill filed in said court against him and others by the president, directors, and company of the Canal and Banking Company and others.

Respondent, saving, &c., for answer to such parts of said bill as he is advised it is material for him to answer, says: He denies that at the time he gave the deed of trust to Robert W. Estlin & Co. he repre-

53 sented to said Estlin that there were no prior incumbrances on the lands conveyed to Nugent and Yerger, trustees, for his use, or gave him any assurances to that effect. On the contrary, he informed said Estlin personally, prior to and at the time he gave the deed of trust, that Charles Bosley had a prior lien on Swiftwater plantation and the lands comprising the same for some twenty-two thousand dollars, principal and interest, at which said Eslin expressed no surprise, and treated the matter indifferently, as he regarded the lands as being worth largely more than that. The object of said Estlin in seeking the trust-deed was to relieve himself as accommodation endorser for respondent, and respondent mortgaged all his property to secure this result. He denies that, after an examination of the records of deeds of said county of Washington, said Estlin found no prior liens on the lands conveyed in his trust-deed, or that under any impression of the sort he took the security. He denies that at this time neither said Estlin nor any of his firm had notice or knowledge, legal or actual, of any lien or encumbrances on said lands; he denies that there were no such liens
54 of record in said county; on the contrary, respondent states there were several prior liens and encumbrances on said lands of record, one in favor of Charles Bosley for $22,000, one in favor of Charles Dahlgreen, admr., for $———, and one in favor of one Myers for $———, all of which said Estlin could have discovered on examination.

Respondent denies that said Bosley acquired no title under his sale to the lands comprising the Swiftwater plantation; on the contrary, he states that said Bosley did acquire a paramount legal and equitable title to the same, notwithstanding the mistake in the range. Respondent was indebted to Charles Bosley in the sum of about $22,000 at the time he filed his said bill in this hon. court, secured by trust-deed on Swiftwater plantation; and in the principal sum of $6,350, secured by mortgage on lots 14 and 15, of the plat of the Tennessee property; for both these debts said Bosley had also an attachment lien on all the Nashville property dating as far back as April 24, 1867. Even now, after exhausting all his securities, there is a balance due him of
55 dollars, as by the report of the master in chancery for the Nashville chancery court is made to appear.

Respondent denies that said Bosley agreed to release all claims on the Mississippi property. He denies that the sale of the Mississippi lands by him, and the bill subsequently filed and the proceedings had thereon to correct the mistake in the description of the lands, was done by collusion and combination, as alleged, to defraud the complainants and those holding claims under the deed of trust in favor said Estlin. He denies that the sale of said lands by said Bosley to Victor Montgomery was done by any collusion and combination, as alleged; or that the same was part of any fraudulent collusion, as charged, or that said Victor Montgomery was cognizant of or participated in any fraudulent or collusive design in effecting the purchase. On the contrary, respondent states that said Victor Montgomery purchased the lands fairly from said Bosley for the sum of fifteen thousand dollars and paid Bosley the money for them—lawful currency of the United States. The purchase
56 was made independently by said Victor and the consideration equalled that offered by any other person. Ten thousand dollars was borrowed by said Victor from respondent's old friend, Robert Allison, who now holds said Victor's bond, secured by mortgage on the lands purchased from Bosley; two thousand dollars was loaned said Victor by his mother; and three thousand dollars was borrowed by W. L. Nugent for him and his brother and sister in New Orleans, La., on

his own note. The whole negotiation for the purchase from Bosley and the loans was made by said Nugent for said Victor, and respondent only acted according to his instructions, tho' of course he felt and took a great interest in the matter. He did nothing, however, until after he was adjudicated a bankrupt.

Respondent denies that he conveyed the Nashville property to his nephew, J. M. Montgomery, on account of any supposed arrangement or agreement as alleged. He was indebted to W. L. Nugent in the sum of $5,000, and to David Freshwater in the sum of $10,000, with in-
57 terest, the whole equal to some $20,000, and the deed to said J. M. was made for this consideration, and upon an agreement that said J. M. should sell the land, then supposed to be very valuable, pay off precedent encumbrances, and the debts due said Nugent and Freshwater, and reconvey the balance to respondent; and this was done to prevent a sacrifice of the property and aid respondent in discharging his 'their obligations, which he could not accomplish as well by mortgaging. The lands were then encumbered as follows:

Attachment lien, favor	J. W. Hughes for			$18,000	
Do. do.	"	Chas. Bosley	"	30,000	
Mortgage lien	"	"	"	6,350	
Do.	"	Cockrell	"	7,458	20
Vendors' lien	"	Watkins	"	4,150	

and the two debts due said Nugent and Freshwater were thought sufficient to absorb nearly the whole of the property, if not all of it. For $22,000 of the debt due Bosley there was lien on the Mississippi lands; they were sold for $7,500, leaving an attachment lien in his favor on the Nashville property next after that of Hughes for $22,500. He
58 denies that J. M. Montgomery was to assume and pay the Bosley debt in part satisfaction of the alleged purchase by him. He denies that the two lien debts were consolidated, by which Bosley accepted or agreed to accept said J. M. as his debtor, retaining his lien as alleged, or that he released or agreed to release respondent from either one of said debts or the lien on the Mississippi property. He denies the making or attempt to make any such agreement, or that by any pretended arrangement or agreement his debt to Bosley was satisfied. He denies that at the time Bosley filed his bill he was not indebted to him; on the contrary, respondent owed Bosley about $30,000. Said bill was filed by Bosley of his own volition, and to make his debt, and not to carry out any fraudulent collusion or combination, as alleged. He denies that there was any agreement that Bosley should buy the lands and afterwards convey them to said Victor; not until some time after the purchase by Bosley did said Victor make any propositions to buy, and the purchase was effected with great difficulty. He denies that either
59 he or said Victor was ever a party to any fraudulent transaction in the premises or had any knowledge of any. He denies that any portion of the purchase-money was advanced or paid to said Bosley by or through him. He denies that no change took place in the ownership, possession, or control of said plantation. He denies that he is as much the actual owner of the Swiftwater plantation as he was in the days of his prosperity and before any change in the legal title. He denies that he is making use of said Victor for the purposes alleged or as alleged. He denies that he has the control and management of said plantation. He denies that in any way he exercises the absolute ownership of it. He denies that by any means or family arrangement the property has been secured to him. He denies that in the name of said Victor he is cultivating or has since said sale attempted to cultivate said plantation,

or that he has appropriated, is appropriating, or has ever attempted to appropriate the rents and profits thereof to his own use, and in fraud of complainants' rights.

60 For answer to first interrogatory, respondent states: Acres 265 or thereabouts, composed of sixteen lots; it was supposed by respondent, when conveyed to J. M. Montgomery in Feb'y, 1867, to be worth $300 per acre, tho' that amount had never been offered for it. The land was only considered valuable as affording building sites near Nashville, Tenn.

Lot 2, 11 acres, 53 poles; lot 3, 10 acres, 111 poles;
Lot 4, 10 " 98 " lot 5, 7 " 37 "
Lot 6, 8 " 120 " lot 7, 8 " 51 " and
Lot 8, 8 " 18 " were mortgaged March 22d, 1866, to one Cockrell for $7,458 $\frac{20}{100}$.

Lot 16, 16 acres, 156 poles; lot 13, 12 acres, 118 poles;
and lot 12, 13 " 8 " were mortgaged to Shankland and sold and bo't by Watkins long anterior to the conveyance.

Lot 15, 18 acres, 25 poles, and lot 14, 18 acres, 121 poles, were mortgaged to Charles Bosley on 2d April, 1866, for $6,350; thus leaving lot 1, 64 acres, 8 poles, lot 11, 13 acres 8 poles, lot 10, 10 acres, 128 poles, and lot 9, 11 acres, 62 poles, subject to Hughes' attachment for $18,000 levied 15 April, 1867, and Bosley's for $30,000 levied 24 April, 1867.

The deed to J. M. Montgomery was filed for record May 11, 1867,
61 long after these attachments were levied. It would be hard to fix a value on the land on the day of sale. Respondent thought it was worth $300, but subsequent events have proven that he was mistaken.

For answer to the second interrogatory he refers to the preceding statements in this answer. The deed to J. M. Montgomery was made 1 Feb'y, '67, but, owing to the difficulty in obtaining the correct form of the acknowledgment, was not acknowledged until 11 April, 1867, at a date entirely too late to benefit the parties intended to be benefitted thereby.

Respondent has already answered the third interrogatory propounded to him.

For answer to fourth interrogatory he states: They did not. They were not.

For answer to fifth interrogatory he says he did not. Respondent refers to this ans. for an explanation of the "whence, when, and how" said Victor got the money to pay Bosley.

For answer to sixth interrogatory he says: The precedent statements of this answer explain the whole transaction.

For answer to seventh interrogatory he says: W. L. Nugent negotiated the loan from said Allison, who is a farmer and capitalist
62 of Missouri, and an old friend of respondent's. J. M. Montgomery is in no way responsible for the debt. Said Allison holds the note of Victor Montgomery for it, secured by mortgage on Swiftwater.

For answer to eighth interrogatory he says: Victor and Wm. F. Montgomery. The place is rented for the current year to J. R. Nugent and W. L. Nugent, for $6,000, except about 100 acres, which respondent and his son Victor are cultivating in copartnership.

For answer to ninth interrogatory he says: R. J. and W. L. Nugent. Respondent and his son have a few mules in use for which said Victor gave said R. J. Nugent some corn in payment. There is a small stock of cattle, hogs, and sheep, bought from said R. J. Nugent as agent for

S. H. Kennedy & Co., in 1868, by said Victor, with means loaned him by his mother. The mules in use by respondent were on the place on the 18th Feb'y, 1868; not as his mules, however, but as S. H. Kennedy & Co.'s mules. They were used by respondent, as said Victor's agent, in making a crop of corn, and were bought in Jan'y, 1869, with a portion of the corn raised in 1868.

63 For answer to tenth int. he says: They are not. The plantation was leased by said Victor as above stated, and the said R. J. Nugent is in possession of it. Respondent has no authority or control over it whatever.

For answer to eleventh interrogatory he says: He had none.

The remaining interrogatory has already been answered.

As to all other allegations of complainants' bill not herein and hereby fully answered, respondent adopts the answer of his codefendants, Victor, Wm. F., and Davidella Montgomery.

And now, having fully answered, respondent prays to be hence dismissed, &c.

W. AND J. R. YERGER, AND
NUGENT AND YERGER,
For Respondents.

UNITED STATES OF AMERICA,
Districts of Missouri, State of Missouri, County of , ss:

Personally appeared before me, a commissioner of the circuit court of the United States for the districts of Missouri, A. B. Montgomery, who states on oath that the matters and things stated in the foregoing answer as of his own knowledge are true, and those stated as of

64 the information of others he verily believes to be true.

A. B. MONTGOMERY.

Sworn and subscribed before me this 3rd day of August, A. D. 1869.

LUCIEN EATON,
U. S. Commissioner Mo. Dists.

Filed and ent'd Aug. 14, 1869.

G. T. SWANN, *Clk.*

And on the said 14th day of August, 1869, came also the defendants, Victor Montgomery, Davidella Montgomery, and W. F. Montgomery, by their solicitors, and filed their answer to the bill of complaint herein, as follows, to wit:

To the hon. the judge of the circuit court of the United States, sitting in equity, for the southern district of the State of Mississippi:

The joint and several answers of Victor Montgomery, Davidella Montgomery, and William F. Montgomery, to the bill of complaint filed in said court, against them and others, by the president, directors, & co. of the New Orleans Canal and Banking Co. and others.

65 Respondents, saving all exceptions and benefit of exceptions which may or can be had and taken to the many errors, misstatements, &c., in said bill contained, to so much and such parts thereof as they are advised it is material for them to answer, say: They deny that, on the 22d day of May, A. D. 1866, their father, A. B. Montgemery, was indebted to the firm of Ro. W. Estlin & Co. in the sum of one hundred and fifty-eight thousand, seven hundred and seventy-seven and $\frac{55}{100}$ dol-

lars, as alleged by complainants; and state that they are informed, believe, and so charge, the real cash balance due said firm by their father was comparatively insignificant. Long and for years prior to the late war the said firm were the factors and commission-merchants of their said father, and during their intercourse as such large and extensive dealings of a monetary character were had, necessitating on the part of their father, at the termination of each successive year's business, the drawing of a large number of notes, which were by said merchants endorsed and thrown on the market, and the proceeds passed to
66 the credit of the said A. B. Montgomery, to buy more slaves or use in speculations, as he might desire. These notes were passed into the account of the said Ro. W. Estlin & Co., at the end of the year, and if the balance was against said Montgomery new notes were given, endorsed, discounted, and the proceeds applied as aforesaid. This ordinary routine was continued for years; and growing out of it, as a necessary result, large debit charges in the way of usurious interest and commissions were annually entered up, and annually compounded, entailing upon said Montgomery a considerable debt balance at the beginning of the late war, made up altogether of these usurious charges. The cash balance alleged to be due said firm on the said 22d day of May, A. D. 1866, was twenty-eight thousand sixty-four and $\frac{76}{100}$ dollars, which would, as respondents verily believe and charge, scarcely equal the aggregate amount of usury charged up against said Montgomery during his connection with said firm. Of the said pretended debt due said firm the amount of ninety thousand three hundred twelve $\frac{79}{100}$ dollars was in the hands of third parties, who held the said firm
67 bound therefor simply as accommodation endorsers for said Montgomery. The said Robert W. Estlin, immediately after the termination of the war, found himself and his said firm liable as endorsers for the said last-mentioned sum of money, and, being desirous not only of being relieved from this obligation, but of starting anew in business, on the same 22d day of May, A. D. 1866, approached said Montgomery with the request that he would give new notes, secured by mortgage on real estate, drawn to his own order and endorsed by him, with which the said Estlin said he could take up the old notes bearing his endorsements, and in the hands of third parties, and thus relieve himself. These new notes were to be given for the face of the old notes, and were to be divided into instalments bearing six per cent. interest. The said A. B. Montgomery consented to this arrangement, executed his notes as requested, and the deed of trust, as alleged, and delivered both to said Estlin for the purposes above indicated. Respondents state that at this time their said father was not indebted to said firm in any but the small amount above stated, nor had the said firm paid
68 off or discharged or taken up the old notes outstanding against them as endorsers, nor did they have a right at law or in equity to call on their said father to pay or secure the same. The whole design of said transaction was to relieve said firm as endorsers; and respondents state that this was the principal, if not the only motive, governing said R. W. Estlin. Respondents are advised that, in view of the fact that at the execution of said deed of trust the said Ro. W. Estlin & Co. had never paid off or taken up said old notes, the said deed of trust itself was wholly unsupported by any present consideration good or valuable in law, and is therefore void. Respondents are informed, believe, and charge that the said deed of trust was made with intent to hinder, delay, and defraud all other the creditors of said A. B. Montgomery; and even if their rights in the premises are not paramount, they insist that

the said deed of trust is absolutely void, and the property secured, or attempted to be thereby secured for the exclusive benefit of complainants, must pass into the hands of the assignee of said Mont-
69 gomery for the common benefit of the general creditors of the bankrupt.

Respondents admit that of the new notes executed by their said father, those set out in the bill passed into the hands of complainants. As to this, however, they state that they came into their hands in pursuance of the understanding aforesaid, and in exchange for the old notes held by them, and not in the possession of said Estlin & Co. until some time after the execution of the deed of trust. They admit that on the 18th day of February, A. D. 1868, their said father, on his own petition, was adjudicated a bankrupt, and that their codefendant, F. Valliant, was duly appointed his assignee.

Further answering, respondents utterly deny that, at the date of the said deed of trust, their father assured said Estlin that there were no prior liens or encumbrances on the lands conveyed in said deed of trust; they deny that said Estlin, after an examination of the records of deeds of said county of Washington, found that there were no prior liens
70 or encumbrances on said lands, or that under any impression of the sort he took said deed of trust; they deny that, at the time said deed of trust was executed, or after the alleged assignment of said notes, neither the said Estlin nor any member of said firm had no notice or knowledge, legal or actual, of any lien or incumbrance on said lands; they deny that there were no such liens of record in said county of Washington. On the contrary, respondents aver and state that at the time said deed of trust was executed and delivered to said Estlin, and prior thereto, he was notified personally that Charles Bosley had a prior deed of trust on the major portion of the lands, viz, the Swiftwater plantation, conveyed by said deed of trust, for the sum of about twenty-two thousand dollars, and being notified of the fact, said it made no difference, as the property was worth four or five times the amount, and that was a mere bagatelle compared with its real value; as indeed it was at that time, when lands were worth almost as much as they were before the war.

71 Respondents further state that they admit that on the said first day of June, 1867, the said Charles Bosley filed his bill as alleged against said A. B. Montgomery, and obtained a decree as alleged, and for the amount alleged, which respondents state was justly due and owing to him. They admit that Alexander Yerger was appointed trustee to sell the lands as alleged; that they were sold by him, and that said Bosley became the purchaser as stated. They admit the filing of the supplemental bill to correct the mistake, and for greater certainty file herewith as parts of their answer full transcripts of all the proceedings had in relation to the said deed of trust given to said Bosley, marked "Exhibits 1 and 2." They deny that said Bosley acquired no title under the sale made by said Yerger, but, on the contrary, aver and charge that he did acquire a full and complete title to the lands conveyed by the deed of trust to said Ro. W. Estlin & Co., notwithstanding the mistake in the range, which will hereafter be more specifically referred to. They admit that on the 30th day of June, A. D. 1868, said Bosley sold
72 and conveyed said lands to the respondents for the consideration of fifteen thousand dollars, but they deny that at this time he had no pretense of right to said lands. On the contrary, they aver and state that he held the paramount right and title to said lands.

Further answering, respondents deny that their said father was not

indebted to said Bosley; on the contrary, they state that he was justly and truly indebted to him in the sum of $22,000, secured by deed of trust on Swiftwater plantation, in Wasington County, Mississippi, comprising the major portion of the lands conveyed in the deed of trust in favor of R. W. Estlin & Co., and in an additional sum, the principal of which amounted to sixty-three hundred and fifty dollars, secured by a mortgage upon a portion of the Nashville property hereafter mentioned. They deny that said Bosley had agreed to release all claim on the property in Mississippi; they utterly deny that the sale of the lands as stated by said Bosley, and the bill subsequently filed, and the proceedings had thereon to correct the mistake in the description of the
73 lands was done by collusion and combination by the said Bosley and Montgomery to defraud complainants and those holding claims under the deed of trust in favor of said Robert W. Estlin & Co.; they deny that the sale of the lands by said Bosley to respondent Victor Montgomery was done by any collusion and combination, as alleged, or that the same was part of any fraudulent collusion, as charged, or that respondent Victor Montgomery was cognizant of or participated in any fraudulent or collusive design in effecting said purchase; on the contrary, respondents state that the said Victor Montgomery, in good faith and for the real bona-fide consideration of fifteen thousand dollars lawful currency of the United States, fairly and fully in hand paid, purchased the said Swiftwater plantation from said Charles Bosley, who, respondents charge, was the real owner thereof at the time.

Respondents admit that said A. B. Montgomery did own a considerable body of land near Nashville, Tennessee, on the first day of February, A. D. 1867, and that he conveyed the same to his nephew,
74 J. M. Montgomery; but they utterly deny that at the date of said conveyance it was arranged and agreed between said Bosley and said A. B. Montgomery and said J. M. Montgomery that the debt due from said A. B. Montgomery to said Bosley should be assumed and paid by said J. M. Montgomery in part satisfaction of the purchase of said Tennessee property. They admit that at the time the said Bosley had a lien upon the Tennessee property, as well as on the said Swiftwater plantation, but they deny that the two debts were consolidated by which said Bosley accepted or ever agreed to accept said J. M. Montgomery as his debtor, retaining his lien for the whole debt on said Tennessee property, or that he released or agreed to release said A. B. Montgomery from either one of said debts, or the lien on his Mississippi lands. They deny the making or attempt to make any such agreement, or that by any pretended arrangement or agreement the debt of said Montgomery to said Bosley was satisfied. They deny that, at the filing of his bill said Montgomery was not indebted to said Bosley;
75 they state that he was largely indebted to him, as hereinbefore stated. They deny that said bills were filed by said Bosley in his name and with his full knowledge and consent to carry out any fraudulent collusion or combination, as alleged, or that as a part of any such pretended collusion or combination, as alleged, there was any agreement, that Bosley should purchase the lands and afterwards convey them to said Victor Montgomery. This pretended combination and fraudulent collusion, respondents state exists alone in the imagination. They deny that said Victor was ever a party to any fraudulent transaction or had any knowledge of any.

They admit that of the lands conveyed by said A. B. Montgomery to said R. W. Estlin & Co., the Swifterwater plantation comprised some

2,000 acres and upwards; and for greater certainty, here describe the sections, township, and range included in said plantation:

Parts of—	Sec.	Town.	Range.	Acres.
S. W. ¼	9	17	8	162
In S. ½	10	17	8	194
76 In S. ½	11	17	8	109
All	12	"	"	647
All	13	"	"	640
All	14	"	"	640
S. W. ¼	15	"	"	160
				2,552

as appears from said deed of trust to said Bosley. Of this land there are some 1,500 acres cleared, and prior to the war as many as 1,200 bales of cotton a year were grown thereon. This plantation is almost entirely exempt from overflow, but the buildings on it are not of the most costly or substantial character. There is a good dwelling and a good steam-gin and fixtures, at present in a wofully dilapidated condition. There are quite a number of quarters on the place, nearly every one of which is rapidly crumbling to decay. The said A. B. Montgomery resided on said plantation in part, but respondents deny that the residence and other buildings were "on a scale commensurate with the then great wealth and social position of their father." His mansion near Nash-
ville, Tennessee, was, and upon it his means were lavished;
77 the plantation near Greenville, Missi., was simply regarded as a transient resting-place, and improved accordingly. Notwithstanding its remoteness from the river, said plantation did suffer during the war, and respondents deny that at said sale by Bosley to respondent Victor Montgomery it was in complete order and condition. It was then and is now in a greatly dilapidated condition, and to put it in the "complete order" suggested by the complainants, would require an outlay of not less than fifteen thousand dollars in cash. They deny that any collusion is apparent in the sale by said Bosley to respondents for double the amount he bid for the land; when properly considered, the transaction is a plain, simple one, in which said Bosley sacrificed some 6 or 7,000$ of his claim to realize something out of a property, which, at that time, he did not regard as valuable, or for which respondents state he was never offered by any one more than $20,000.

Respondents admit that at the time of said purchase they had
78 no private or separate estate of their own, except about six head of horses acquired during the war between the United States and so-called Confederate States. They state that neither they nor their said father had any except the above-described 6 head of horses. They deny that any portion of the purchase-money to said Bosley was advanced or paid either directly or indirectly through their said father. They deny that in the mean time no change took place in the ownership, possession, or control of said plantation. They deny that said A. B. Montgomery is in fact as much the actual owner of said plantation as he had been in the days of his prosperity, and before any change in the legal title. They deny that he makes use of said Victor Montgomery to carry out any purposes as alleged. They deny that he has the control and management of said plantation. They deny that in any way he exercises the absolute ownership thereof through the apparent deference and respect paid to his age, experience, and parental authority. They deny that by any means or family arrangement

79 the property has been secured to said A. B. Montgomery. They deny that, in the name of respondent Victor, he is cultivating, or has, since said sale attempted to cultivate said plantation, or that he has appropriated, is appropriating, or has ever attempted to appropriate the rents and profits thereof to his own use, in fraud of the rights of complainants. On the contrary, respondents aver and state, that since the sale of said lands under the Bosley trust-deed, said A. B. Montgomery has had nothing to do with them except in the capacity of a mere agent for respondents Victor and Davidella. During the past year he has superintended the making of a crop of corn for them, and respondent William F., with his father-in-law, N. J. W. Wortham, made a crop of cotton on a portion of said plantation.

Respondent Victor Montgomery, further answering the special interrogatories filed by complainants, says:

1. For answer to first interrogatory he files herewith a plat of the Nashville or Tennessee property, marked "Exhibit 3," exhibiting
80 the number of acres conveyed to said J. M. Montgomery, the liens existing at the time of conveyance, its probable value, quality, and condition, with statements for which the lands sold under the decree of the chancery court of Nashville, Tennessee; which said map respondent states is a correct transcript of that recorded in Nashville, Tennessee.

2. For answer to second special interrogatory he says: A. B. Montgomery was indebted to W. L. Nugent, esq., in the sum of five thousand dollars, for money loaned and services rendered as attorney and counsellor at law, and to one David Freshwater, formerly his overseer on Swiftwater plantation, for services rendered and money loaned in the sum of ten thousand dollars, with interest. The aggregate amount of these debts was twenty thousand dollars, and they represented the consideration of the conveyance. At the date of the conveyance, to wit, on the 1st day of February, A. D. 1867, the Tennessee property was encumbered with the liens stated on the plat thereof hereto attached, and said A. B. Montgomery was asked by the said Freshwater and Nugent
81 for a mortgage upon it. To this he objected, for the reason that he desired to sell the lands and was fearful that the accumulation of mortgages would prevent. Said Nugent and Freshwater then suggested that he make a conditional sale to any third party for the purpose of securing their debts, and they would agree that he might sell the land, as the said A. B. Montgomery might direct, and after paying the prior encumbrances and the debts due them, that the balance of the land might be reconveyed to said A. B. Montgomery. The deed was accordingly made to said J. M. Montgomery. As soon, however, as the crash of 1867 occurred, suits were instituted upon the prior encumbrances and all the said Tennessee property was sold, and did not bring enough to discharge the said liens, leaving the said Nugent and Freshwater debts unpaid. Some time prior to his bankruptcy said A. B. Montgomery released his claims upon said lands in favor of said J. M. Montgomery, who was simply holding as a naked trustee for said Nugent and Freshwater, in the hope that something might be realized to pay their debts; but this even proved a futile effort. The records of
72 the causes referred to are in the chancery court of Nashville, Tennessee, and can easily be obtained by the complainants. Said J. M. Montgomery never paid anything for said lands, nor did he ever agree to pay anything. The consideration of the deed to him was the debts due said Freshwater and Nugent, and he held the title as a naked trustee for the purposes indicated above, and without reference to any

debt due Bosley—further than as stated in the answer to interrogatory second.

3. In answer to third interrogatory, respondents know nothing further than they have learned from the exhibits herewith filed, and the statements of said A. B. Montgomery. Respondents, at the date of the sale to them by said Bosley, owed him nothing; at the date of the deed to J. M. Montgomery, A. B. Montgomery owed Charles Bosley largely; for a portion of the debt he had a lien on the Tennessee property. Respondents know nothing of amounts or payments beyond what they have learned as aforesaid.

In answer to fourth interrogatory, respondent says: A. B. Montgomery never did have a settlement with Bosley at the time
83 stated, nor was it ever agreed or understood that said Montgomery should pay any portion of the Bosley debt as a part of the consideration for the deed to him.

In answer to fifth interrogatory, respondent says: J. M. Montgomery did not pay or advance to Bosley the last consideration stated in the deed from said Bosley to respondent, nor did get any credit as supposed. As a full answer to the last branch of this interrogatory respondent states: Immediately or shortly after the rendition of the decree for the sale of the Swiftwater plantation, the solicitor for Bosley demanded and took possession of the property. After the sale and purchase by Bosley, respondent applied to his friend and attorney, W. L. Nugent, to make the effort to purchase the property from Mr. Bosley on some terms that would enable the children of said A. B. Montgomery, then in bankruptcy, to purchase it. Respondent's mother then had some three or four thousand dollars, received as her distributive share in part of the estate of her deceased sister, Sally Flournoy. This money was
84 applied for and obtained. With money borrowed of Mrs. W. F. Montgomery to defray travelling-expenses, respondent and said Nugent went to Nashville, Tennessee, to purchase the property from said Bosley. Repeated efforts were made without success. All means known to respondent and said Nugent were employed, and nothing would move said Bosley. He had been offered fifteen thousand dollars cash for the property by other parties, and would not take less. In sheer desperation said Nugent offered to give said Bosley fifteen thousand dollars for the property if he would give the parties until the first day of July, 1868, to complete the payment. To this said Bosley consented. Said Nugent then returned to his home in Mississippi, leaving respondent in Nashville, Tennessee, to receive and pay over the money. On his return said Nugent immediately began to cast about to ascertain if the money could not be borrowed on a promise of a mortgage of the *the* property to secure the loan. Prior, however, to leaving Nashville he leased the plantation from said Bosley for the said Wm. F., Davidella, and respondent. On making inquiry of said
85 A. B. Montgomery if there was any old friend of the family who might not assist the parties, he was told that Robert Allison, of Missouri, was an old friend and would do anything he could for said A. B. Montgomery, or his children. Thereupon, on or about the 1st day of June, A. D. 1868, said Nugent, with the use of a little of the means afforded by Mrs. Davidella Montgomery, sent said A. B. Montgomery to said Robert Allison, in Mo., with a statement of the condition and value of the property and several certificates showing that a mortgage would be a good security for the amount that Bosley had agreed to take for the property. On exhibiting the papers to said Robert Allison he agreed to loan the said Wm., F., Davidella, and respondent ten thousand

dollars on a mortgage of the property, but insisted that he must have the mortgage at the instant that he loaned the money, and that he must have ten per cent. interest annually on the amount. To this the parties assented. The means afforded by Mrs. Davidella Montgomery, the mother of respondent, had been in part employed in the growth of crops on said Swiftwater plantation as aforesaid, and in paying travell-
86 ing-expenses until only about two thousand dollars could be realized from them to aid in the purchase. Three thousand dollars more were needed, and said Nugent went to New Orleans, and on his own note, endorsed by his merchant, raised that amount for respondent. This, with the ten thousand dollars loaned by said Allison, and *and* the two thousand dollars loaned by the said Mrs. Montgomery, constituted the purchase-money of the Swiftwater plantation. The agreement with Bosley required the payment of the money in Nashville, Tennessee, and the agreement with Allison required a mortgage the instant his money passed into respondent's hands; and as the said Davidella was a minor, and the said Wm. F. absent in Texas, it became necessary that the conveyance should be from Bosley to respondent for the use of himself, his brother, and sister, and that it should contain a proviso authorizing him to make the mortgage to Allison so as to bind them. This, and this only, is the reason for the peculiar phraseology of the deed from said Bosley to respondent.

87 For answer to sixth interrogatory respondent refers to preceding answers to the ints. heretofore asked.

In answer to seventh int., respondent says: Robert Allison is a farmer and capitalist, living in Louisiana, Missouri; the loan was negotiated as aforesaid; J. M. Montgomery is in no way nor manner responsible for the loan. Said Allison holds respondent's note secured by a mortgage on Swiftwater plantation for the loan.

In answer to eighth interrogatory, respondent states: He has charge and management of the lands conveyed by Bosley to him conjointly with his brother William and sister Davidella; tho' for the present year he has rented it to W. L. Nugent for the sum of six thousand dollars, reserving about one hundred acres, which he and his sister David. Montgomery are cultivating together. Two thousand dollars of the rent has been paid, leaving a balance of 4,000$ for which he is responsible to me.

88 In answer to ninth int., respondent states: R. J. Nugent and his brother own nearly all the stock on the place; the stock and farming implements on the place in Jan'y, 1868, was seized and sold by S. H. Kennedy & Co. under a deed of trust given by A. B. Montgomery to them in 1867, upon it and them. A portion of the stock and farming implements was purchased from said S. H. Kennedy & Co. by respondent and his brother William, and was paid for in part with money obtained from their mother, and in part with corn sold said R. J. Nugent in Jan'y, 1869. R. J. Nugent was the agent of said S. H. Kennedy & Co., and the corn was raised by respondent on said plantation in 1868.

In answer to tenth interrogatory, respondent states: He is not. It is not.

In answer to eleventh interrogatory, respondent says: They owned none.

For answer to twelfth int., respondent refers to preceding interrogatories answered.

Recurring to the statements hereinbefore made touching the Bosley deed of trust, respondents state: That on the 13th day of July, 1848, said

A. B. Montgomery borrowed from Charles Bosley the sum of four-
89 teen thousand dollars and executed his bond for the same, payable ten years after date, with running interest, payable annually, at eight per cent. This money was borrowed upon the faith of a mortgage on said Swiftwater plantation, the numbers of which were furnished the attorney of said Bosley; and to carry out the agreement said A. B. Montgomery on the day he borrowed said money did execute and deliver to said Bosley a deed in trust upon said Swiftwater plantation as he then believed and intended, and the slaves then upon it, in and by which said trust-deed he covenanted that he was lawfully seized and possessed of said lands, had a good right to convey them, and that *and that* they were unencumbered, and warranted title to the same against the claims of all persons. The lands are described in said Bosley trust-deed as follows:

Parts of—	Sec.	Town.	Range.	Acres.
All	12	17	9 W.	640
W. ½	13	"	" "	320
S. W. ¼	9	"	" "	160
Fraction S. ½	10	"	" "	260
" S. ½	11	"	" "	100
Und'd ½ E. ½	14	"	" "	160
" S. W. ¼	15	"	" "	80
90 E. ½	13	"	"	320
W	14	"	"	320

aggregating 2,360 acres, and the whole of the lands thereof was in range eight west. In writing up said trust-deed the attorney for said Bosley made a mistake in the description by putting the range as nine instead of eight. Respondents file herewith as part of their answer a plat marked "Exhibit 5," of said Swiftwater plantation taken from the maps on file in the office of the probate clerk of said Washington County, and of the lands in township seventeen, range nine west, marked "Exhibit 4." All the sections in township 17, range nine, at the date of Bosley trust-deed were in the actual, adverse, open, visible, exclusive, and notorious possession of other parties; and the said A. B. Montgomery had no pretense of right or title to the same. They were parts of improved plantations, and respondents refer to the annexed map, marked "Exhibit 4," to show the names of the respective owners thereof. All
the sections constituting the Swiftwater plantation were then in the
91 possession of said A. B. Montgomery, and were in township seventeen, range eight west, and the slaves described in said deed of trust were living on and cultivating said plantation. These lands, and not those in township 17, range 9 west, were those intended to be conveyed, and in fact conveyed by said A. B. Montgomery to Onslow, trustee for said Bosley. In fact, respondents state that prior to the execution of said trust-deed said Bosley had ridden over said Swiftwater plantation, and it was because of his personal knowledge of the place that he agreed to accept the security of the deed. At the time he borrowed the money said A. B. Montgomery and said Bosley both believed that the lands comprising said plantation were properly described; it was the purpose and intention of both parties to have them conveyed, nor did they, or either of them, discover the error until some time after the actual sale by Alexander Yerger, trustee as hereinbefore stated. At the date of Bosley trust-deed said A. B. Montgomery owned no lands in township 17, range 9 west, except the E. ½ of the N. E. ¼ of section 14,
92 and the only lands he owned in township seventeen, of range eight west, were the sections above set forth. Had said Robert

Estlin examined the records of said Washington County as he should have done, and as he pretends he did do, he would have found the Bosley trust-deed of record in Book N, of the records of said county, at pages 266, 267, 268, and 269, as in fact respondents state it was. Had he then instituted the least inquiry he would readily have ascertained the truth of the matter. The assessment rolls would have shown that at the time A. B. Montgomery owned no lands in township 17, range 9 west, but did own, and was in the actual possession of exactly the sections described in township seventeen, range eight west.

The bill to foreclose filed in the United States circuit court in equity for the southern district of Mississippi, was filed by said Bosley of his own accord, and to save his debt, on which the interest alone, up to the year 1860, had been paid; the decree was entered up against said A. B. Montgomery because he had no valid defence to the suit, and not
93 by reason of any fraudulent collusion or combination as alleged; the sale was made by him, and his attorneys were instructed to let the property go if any one would bid ten thousand dollars for it; and at that time respondents believed and felt that their father and they had lost the plantation forever. Respondents did not then have the means to purchase, nor did they believe they ever would have. Afterwards, on being approached upon the subject, said Bosley refused to sell the same to said A. B. Montgomery, and after long persuasion only consented to sell the same to respondents as before stated.

And now having fully, answered, respondents pray their title to the lands conveyed to them by said Bosley be quieted, and complainants and all others claiming under the Estlin trust-deed be forever enjoined from disturbing them in the possession thereof, and to be hence dismissed, &c.

And as in duty bound, respondents will ever pray, &c.

W. AND J. R. YERGER, AND
NUGENT AND YERGER,
Sols. for Respondents.

STATE OF MISSISSIPPI,
Washington County:

94 Personally appeared before me, John Fawn, clerk of the chancery court of said county, Victor Montgomery, who, being duly sworn, says that the matters and things stated in the foregoing answer as of his own knowledge are true, and those stated as of the information of others he verily believes to be true.

VICTOR MONTGOMERY.

Sworn to and subscribed before me this 6th day of August, A. D. 1869.

JOHN FAWN, *Clerk*,
By E. J. COMSTOCK, *D. C.*

Filed and ent'd Aug. 14th, 1869.

GEO. T. SWANN, *Clerk.*

Exhibit No. 1, referred to in the foregoing answer of Victor Montgomery et al., to said bill of complaint, and filed with the same, is as follows, to wit:

Exhibit No. 1.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Pleas and proceedings had and done before the honorable Robert A.

Hill, judge of the circuit court of the United States for the
95 southern district thereof, at the term, 186 , of said court.

CHARLES BOSLEY
vs. } 15.
A. B. MONTGOMERY & WIFE.

Be it remembered that heretofore, to wit, on the 1st day of June, A. D. 1867, the complainant, Charles Bosley, filed in the clerk's office of the circuit court of the United States for the southern district of Mississippi, his bill of complaint and exhibits thereto in words and figures, as follows:

To the honorable the judges of the circuit court of the United States, sitting in chancery at Jackson, for the southern district of Mississippi:

Charles Bosley, who is a citizen of the State of Tennessee, brings this his bill of complaint against Alexander B. Montgomery and Davidella Montgomery, his wife, who are citizens of the State of Mississippi, residing in the southern district thereof, complaining. Your orator, Charles Bosley, respectfully shows that on the 13th day of July, in the year 1848, the defendant, Alexander B. Montgomery, made his bill single of that date, by which he promised to pay to your orator, ten years
96 after the date thereof, the sum of fourteen thousand dollars, with interest on the same at the rate of 8 per ct. per annum, amounting to $1,120 per year, payable annually, on the 13th day of each and every year, after the date of said bill single.

Your orator here files said original bill single, marked "Exhibit A," and prays that the same may be considered a part of this bill. The consideration of said bill single was a loan of $14,000, made by your orator at its date to the said Montgomery. To secure the payment of said bill single and the interest that might accrue and remain unpaid thereon the said Montgomery made and executed a deed of trust by which he sold and conveyed to John Overton, as trustee, certain tracts or parcels of land containing, in all, about 2,360 , more or less, situated in the county of Washington and State of Mississippi. He also, by the same deed, conveyed in trust to said Overton, as trustee, also to secure the payment of the bill single and interest aforesaid, a large number of slaves then belonging to the said Montgomery. Your orator further states that Davidella Montgomery, the wife of said Alexander B.
97 Montgomery, also joined in said deed and executed and acknowledged the same in the manner required by law for the purpose of relinquishing and barring her right and claim of dower in and to said land so conveyed as aforesaid. Your orator here files, marked "Exhibit B," the deed of trust so executed as aforesaid, and prays that the same may be considered as part of this bill.

Your orator further states that the said Alexander B. Montgomery punctually paid the annual interest accruing on said bill single up to the maturity of the same. He also afterwards paid the interest on said bill single for the year 1859 and 1860, all of which payments are credited on said bill single, but the said Montgomery has never made any payment or part payment of the principal of said bill single, and he has made no payment on account of interest thereon, or for any other purpose since the 10th day of July, 1860, and is now due and owing by said Montgomery to your orator, as your orator avers and charges, by

98 the said Montgomery, the whole of the principal of said bill single, to wit, the sum of $14,000, and interest thereon at the rate 8 per ct. per annum since the 13th day of July, 1860, making of interest now due and unpaid the sum of $7,653, making together of principal and interest the sum of $21,653, now due to your orator and unpaid on said bond. Your orator has endeavored to obtain payment of the same from the said defendant, but he has failed and refused to pay the same.

Your orator further states that by the terms of said deed of trust to the said Overton, he was authorized and empowered, and it was his duty, to take the lands and slaves therein conveyed into his possession whenever the said Montgomery made default in the payment of either the principal or interest of said bill single, and to expose the same for sale for cash, or on reasonable credit, as to him might seem better, to the highest bidder after twenty notice being giv*ing* by advertisement in three public places in the county of Washington aforesaid, of the time and place of sale, and out of the proceeds of said sale to pay to your
99 orator the amount of principal and interest that might be due to him on the bill single aforesaid. Your orator further states that all of the conveyed by said deed of trust have either died since the execution of it or have been set free and manumitted so that the same cannot be made available for the purpose of paying said bill single, and your orator must therefore look to a sale of the land conveyed by said deed of trust for the payment of the amount due to him as aforesaid.

Your orator further states that the said John Overton, trustee as aforesaid, is a citizen and resident of the State of Tennessee and resides and is beyond the jurisdiction of this court. Your orator has applied to him and requested him to execute the deed of trust aforesaid, and to sell the lands conveyed thereby to him for the purpose of paying the amount due to your orator as aforesaid. But he declines and refuses to take possession of said land, or to sell the same, or to execute said trust in accordance with its provisions so as to pay off and satisfy the amount due to your orator, and your orator is remediless in the premises, and cannot obtain a sale of the land conveyed
100 by said deed of trust or payment and satisfaction of the amount due to him as aforesaid, without the interposition of this honorable court.

In tender consideration, &c., and as your orator is remediless, &c., he prays that the said Alexander B. Montgomery and Davidella Montgomery be made defendants to this bill; that subpœnas issue, &c., and they be compelled to appear and answer, &c. And your orator prays that at the final hearing your honor will decree that the said Montgomery shall pay to your orator the amount of principal and interest due to him on the bill single aforesaid, and that another trustee be appointed and substitued in the place and stead of the said John Overton, and be authorized and directed to sell and convey the land in the deed of trust mentioned as aforesaid, according to the provisions of said deed, and out of the proceeds of said sale to pay to your orator the amount of the principal and interest due to him as aforesaid. Or, if mistaken in the relief asked, your orator prays for such other and further
101 relief as in equity he should receive; and as in duty bound, &c.

W. AND J. R. YERGER, AND
W. YERGER, JR.,
Sols.

Filed and spa. iss'd June 1, '69.

G. T. SWANN, *Clk.*

Exhibit A to bill.

$14,000.

Ten years after date I promise to pay to the order of Charles Bosley the sum of fourteen thousand dollars, at the residence of Col. Philip Hoggatt, the brother-in-law of said Bosley, in Adams County, State of Mississippi, the annual interest on which principal sum of fourteen thousand dollars amounting, at the rate of eight per centum per annum, to the sum of eleven hundred and twenty dollars, ($1,120,) I promise punctually to pay to the order of said Charles Bosley at the residence of said Col. Philip Hoggatt, in Adams County, State of Mississippi, on the 13th day of July, in each and every year hereafter during the continuance of the loan, namely, on the 13th day of July, in the years 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, and 1858, at which last time, namely, on the 13th day of July, 1858, the principal sum of fourteen thousand dollars also becomes due as aforesaid. It is fur
102 ther the express agreement that should I make any default in the payment of the annual instalments of the interest as aforesaid the principal sum of fourteen thousand dollars is to become immediately due and payable.

Witness my hand and seal this 13th day of July, 1848.

[SEAL.] A. B. MONTGOMERY.

Received of A. B. Montgomery, this the twelfth day of July, 1849, eleven hundred and twenty dollars, being the first year's interest on the within note.

CHS. BOSLEY.

JULY 12TH, 1849.

Received the interest on the within note for the year eighteen hundred and fifty, eleven hundred and twenty dollars.

CHS. BOSLEY.

JULY 13TH, 1850.

Received the interest on the within note for the year eighteen hundred and fifty-one, eleven hundred and twenty dollars.

C. B.

JULY 13TH, 1851.

Received the interest on the within note for the year eighteen
103 hundred and fifty-two, eleven hundred and twenty dollars.

CHS. BOSSLEY.

JULY 13TH, 1852.

Received the interest on the within note for the year eighteen hundred and fifty-three, eleven hundred and twenty dollars.

CHS. BOSSLEY.

JULY 11TH, 1853.

Received the interest on the above note for the year eighteen hundred and fifty-four, eleven hundred and twenty dollars.

CH. BOSSLEY.

JULY 13TH, 1854.

Received the interest on the above note for the year eighteen hundred and fifty-five, eleven hundred and twenty dollars.

CHS. BOSSLEY.

JULY 13TH, 1855.

Received the interest on the above note for the year eighteen hundred and fifty-six, eleven hundred and twenty dollars.

CHS. BOSSLEY.

JULY 14TH, 1856.

Received the interest on the within note for the year eighteen
104 hundred and fifty-seven, eleven hundred and twenty dollars.

CHS. BOSSLEY.

JULY 13TH, 1857.

Received the interest on the within note for year eighteen hundred and fifty-eight, eleven hundred and twenty dollars.

CHS. BOSSLEY.

JULY 13TH, 1858.

Received the interest on the within note for the year eighteen hundred and fifty-nine, eleven hundred and twenty dollars.

CHS. BOSSLEY.

JULY 12TH, 1859.

Received the interest on the within note for the year eighteen hundred and sixty, eleven hundred and twenty dollars.

CHS. BOSSLEY.

JULY 10TH, 1860.

Filed June 1st, 1869.

G. T. SWANN, *Clk.*

Exhibit B to bill.

Know all men by these presents, that I, Alexander B. Montgomery, of the county of Washington, State of Mississippi, for and in consideration of one dollar to me in hand paid, the receipt whereof is hereby
105 acknowledged, and also for the other considerations hereinafter named, have this day bargained and sold, and do by these presents bargain, sell, alien, transfer, and convey unto John Overton, of the county of Davidson, State of Tennessee, his heirs and assigns forever, all my rights, title, interest, claim, and demand of, in, and to the following-described pieces or parcels of land situate in the county of Washington, State of Mississippi, known and described as follows, namely:

Section twelve, (12,) township seventeen, (17,) range nine (9) west, of the basis line in the Choctaw district, being six hundred and forty (640) acres; also, the west half of section thirteen, (13,) same township and range, being three hundred and twenty (320) acres; also, the southwest quarter of section nine, (9,) same township and range, being one hundred and sixty (160) acres; also, a fraction of the south half of section ten, (10,) same township and range, being two hundred and sixty (260) acres; also, a fraction of the south half of section eleven, (11,) same township and range, being one hundred (100) acres; also, an un-
106 divided half of the east half of section fourteen, (14,) same township and range, being, when divided, one hundred and sixty (160) acres; also, the undivided half of the southeast quarter of section fifteen, (15,) same township and range, being, when divided, eighty (80) acres; also, the east half of section thirteen (13) and the west half of section fourteen, (14,) same township and range, being six hundred and forty (640) acres, in all, twenty-three hundred and sixty acres of land, more or

Exhibit A to bill.

$14,000.

Ten years after date I promise to pay to the order of Charles Bosley the sum of fourteen thousand dollars, at the residence of Col. Philip Hoggatt, the brother-in-law of said Bosley, in Adams County, State of Mississippi, the annual interest on which principal sum of fourteen thousand dollars amounting, at the rate of eight per centum per annum, to the sum of eleven hundred and twenty dollars, ($1,120,) I promise punctually to pay to the order of said Charles Bosley at the residence of said Col. Philip Hoggatt, in Adams County, State of Mississippi, on the 13th day of July, in each and every year hereafter during the continuance of the loan, namely, on the 13th day of July, in the years 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, and 1858, at which last time, namely, on the 13th day of July, 1858, the principal sum of fourteen thousand dollars also becomes due as aforesaid. It is fur
102 ther the express agreement that should I make any default in the payment of the annual instalments of the interest as aforesaid the principal sum of fourteen thousand dollars is to become immediately due and payable.

Witness my hand and seal this 13th day of July, 1848.

[SEAL.] A. B. MONTGOMERY.

Received of A. B. Montgomery, this the twelfth day of July, 1849, eleven hundred and twenty dollars, being the first year's interest on the within note.

CHS. BOSLEY.

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CHS. BOSSLEY.

JULY 13TH, 1858.

Received the interest on the within note for the year eighteen hundred and fifty-nine, eleven hundred and twenty dollars.

CHS. BOSSLEY.

JULY 12TH, 1859.

Received the interest on the within note for the year eighteen hundred and sixty, eleven hundred and twenty dollars.

CHS. BOSSLEY.

JULY 10TH, 1860.

Filed June 1st, 1869.

G. T. SWANN, *Clk.*

Exhibit B to bill.

Know all men by these presents, that I, Alexander B. Montgomery, of the county of Washington, State of Mississippi, for and in consideration of one dollar to me in hand paid, the receipt whereof is hereby
105 acknowledged, and also for the other considerations hereinafter named, have this day bargained and sold, and do by these presents bargain, sell, alien, transfer, and convey unto John Overton, of the county of Davidson, State of Tennessee, his heirs and assigns forever, all my rights, title, interest, claim, and demand of, in, and to the following-described pieces or parcels of land situate in the county of Washington, State of Mississippi, known and described as follows, namely:

Section twelve, (12,) township seventeen, (17,) range nine (9) west, of the basis line in the Choctaw district, being six hundred and forty (640) acres; also, the west half of section thirteen, (13,) same township and range, being three hundred and twenty (320) acres; also, the southwest quarter of section nine, (9,) same township and range, being one hundred and sixty (160) acres; also, a fraction of the south half of section ten, (10,) same township and range, being two hundred and sixty (260) acres; also, a fraction of the south half of section eleven, (11,) same township and range, being one hundred (100) acres; also, an un-
106 divided half of the east half of section fourteen, (14,) same township and range, being, when divided, one hundred and sixty (160) acres; also, the undivided half of the southeast quarter of section fifteen, (15,) same township and range, being, when divided, eighty (80) acres; also, the east half of section thirteen (13) and the west half of section fourteen, (14,) same township and range, being six hundred and forty (640) acres, in all, twenty-three hundred and sixty acres of land, more or

less, to have and to hold the said pieces or parcels of land with all the hereditaments and appurtenances thereto in any manner belonging unto said John Overton, his heirs and assigns, forever, as an indefeasible inheritance in fee-simple.

I do further covenant I am lawfully seized of said several pieces, parcels, or tracts of land, have a good right to convey, and the same are unencumbered, and do further covenant with said Overton and his heirs to warrant and defend the title to said several pieces, parcels, or tracts of land against the lawful claim or claims of all and every person or persons whatsoever. For the consideration aforesaid, I do further
107 bargain, sell, transfer, and convey unto said John Overton and his heirs all my right, title, claim, and interest of, in, and to the following-named negroes, to wit: Jacob, aged about fifty years; Judy, aged about fifty-five years; Juliet, aged about thirty years; Phillis, aged about twenty-eight years; Louisa, aged about eight years; Rose, aged about twenty-seven years; Marian, aged about eight years; Boyd, aged about six years; Sarah, aged about twenty years; Isaac, aged about thirty years; General, aged about twelve years; Evaline, aged about twenty-two years; Simeon, aged about fifty years; Sam, aged about seventeen years; Emily, aged about twenty-two years; Kizzy, aged about eight; Hampton, aged about twenty-five years; Yazzo, aged about twenty years; Becky, aged about forty years; Harry, aged about thirty-five years; Charles, aged about seventeen years; Martha, aged about fifteen years; Betsy Ann, aged about eleven years; Fountain, aged about thirty-five years; Jane aged about thirty years; Joseph, aged about twenty-five years; Winny, aged about twenty-two years; Calvin, aged about twenty years; Mary aged about
108 eighteen years; Charles, aged about twenty years; G. Mary, aged about twenty years; Dick, aged about twenty-seven years; Sarah, aged about twenty-four years; Dinah, aged about forty years; Unity, aged about eighteen years; Fayette, aged about sixteen years; Prue, aged about fourteen years; Judy, aged about two years; Carter, aged about thirty-five years; Franky, aged about twenty-two years; Dicey, aged about four years; Stephen, aged about twenty-two years; Caudace, aged about twenty years; Reuben, aged about nineteen years; Esther, aged about twenty-five years; Spencer, aged about twenty-two years; Mary Cox, aged about twenty years; Johnson, aged about twenty-five years; Lewis, aged about twenty-eight years; Matilda, aged about twenty-five years; Lee, aged about six years; Alf, aged about four years; Bob, aged about twenty-five years; Ellen, aged about twenty-five years; Ann, aged about thirty years; Emeline, aged about fourteen years; Bill, aged about twelve years; Syd, aged about nine years; Peter, aged about forty years; Reese, aged about twelve years; Alex or Elleck, aged about twenty years; Joe, aged about twenty-
109 three years; Bill, aged about eighteen years; Joe, aged about twenty years; Jack, aged about twenty years; Emma, aged about eighteen years; Ephraim, aged about thirty-five years; Winney, aged about twenty-four years; Clarissa, aged about four years; Emily, aged about eighteen years; Jim Crack, aged about seventeen years; Henry, aged about seventeen years; Andrew, aged about eighteen years; John, aged about forty years; Sally, aged about forty years; Frank, aged about two years; Wash, aged about four years; Dennis, aged about twenty-eight years; Rachel, aged about twenty-five years; Priscilla, aged about ten years; Chloe, aged about seven years; Spence, aged about four years; Stephen, aged about thirty-four years; Lucy, aged about thirty years; Louisa, aged about fifteen years; West, aged about

ten years; and Betsy Ann, aged about twelve years. I do further covenant that I am the legal owner of all said negro slaves—have a good right to convey; that the same are unencumbered; that said slaves are slaves for life, and that I will unto said Overton, his executors,
110 heirs, &c., warrant and defend the title to each, every, and all of said slaves against the claim or claims of all and every person or persons whatsoever.

And for the consideration aforesaid, and divers other good and valuable considerations, I, Davidella Montgomery, wife of said Alexander B. Montgomery, do sell, transfer, and convey, and hereby specially release and quitclaim unto said John Overton, his heirs and assigns, all my right, title, claim, interest, or possibility of dower in to or out of the afore-described several tracts of land, and of all the slaves hereinbefore conveyed in fee-simple by my husband, the said Alexander B. Montgomery, unto said John Overton, and his heirs.

But the above deed of conveyance of lands and negro slaves is made for the following uses and purposes, and no other, that is to say: I have this day borrowed of Charles Bosley the sum of fourteen thousand dollars, which sum he has agreed, upon my punctually paying the annual interest, to let me retain for ten years; to secure which I have this day executed to said Bosley my bond or bill single for said sum of
111 fourteen thousand dollars, payable ten years after date, at the residence of Col. Phillip Hoggatt, the brother-in-law of said Charles Bosley, in Adams County, State of Mississippi, the annual interest on which principal sum of fourteen thousand dollars amounting, at the rate of eight per centum per annum, to the sum of eleven hundred and twenty dollars, ($1,120,) I promised punctually to pay to the order of said Charles Bosley, at the residence of said Col. Philip Hoggatt, in Adams County, State of Mississippi, on the 13th day of July in each and every year during the loan, namely, on the 13th day of July, in the years 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, and 1858, at which last time, namely, on the 13th day of July, 1858, the principal sum of fourteen thousand dollars also becomes due. And it was further agreed that should I make any default in the payment of the annual instalments of the interest the principal sum of fourteen thousand dollars was to become immediately due and payable, all of which fully appears on the face of said bond or bill single, executed by me, Alexander B. Montgomery, to Charles Bosley as aforesaid. Now, should I punctually pay
112 said instalments of interest as they respectively fall due and *and* also punctually pay said principal sum of fourteen thousand dollars at the time it is due, then this deed of conveyance to be void.

But if I should make default in the payment of any of the annual instalments of interest as aforesaid, or should I, having paid all the instalments of interest aforesaid, fail to pay said principal sum of fourteen thousand dollars, when the same is due as aforesaid, then said Overton, as trustee, is authorized and empowered to take said several tracts of land and all said slaves into his possession, and after twenty days' notice of the time and place of sale, advertised at three public places in Washington County, Mississippi, expose to public sale for cash, or on reasonable credit as to him seems better, the tracts of land and all the slaves above conveyed, or a sufficiency of both or either, as he may cho'se, and sell to the highest bidder; and with the proceeds of said sale, after satisfying necessary expenses, pay the amount of the instalments of interest due, and also the principal sum of fourteen thousand dollars (which latter is to become immediately due in default of
113 payment of the annual interest as aforesaid; or should I have

paid all said instalments of interest as the same regularly fall due, and should fail to pay at maturity said principal sum of fourteen thousand dollars, then, in this latter event, said Overton is only to pay to said Bosley, out of the proceeds of said sale, said principal sum of fourteen thousand dollars.

In case of a sale, said Overton is empowered to make deeds to the purchasers of said lands and slaves.

In testimony whereof, the said *the said* Alexander B. Montgomery and Davidella Montgomery, his wife, hereto set their hands and affixed their seals this 13th day of July, in the year 1848. In the sixth line from top, on first page, the words "his heirs and assigns forever," interlined before signing.

A. B. MONTGOMERY. [SEAL.]
DAVIDELLA MONTGOMERY. [SEAL.]

STATE OF TENNESSEE,
Davidson County, City of Nashville, ss.:

Personally appeared before me, John Catron, one of the associate justices of the Supreme Court of the United States of America,
114 in the State, county, and city aforesaid, Alexander B. Montgomery and Davidella Montgomery, his wife, the grantors in the foregoing or within deed or indenture named, from them to John Overton, and severally acknowledged the same to be their voluntary act and deed, for the uses and purposes therein mentioned. And the said Davidella Montgomery, wife of said Alexander B. Montgomery, did moreover, on a private examination made of her by me *me* apart from her husband, acknowledge that she signed, sealed, and delivered the same as her voluntary act and deed, freely, without any fear, threats, or compulsion of her said husband.

As witness my hand and seal this 13th day of July, 1848.

J. CATRON,
Asso. Jus. S. C. U. S.

STATE OF MISSISSIPPI,
Washington County, ss.:

I, Willis L. Robards, clerk of the probate court of the said county, hereby certify that the foregoing instrument was this day filed for record, and recorded in my office, book "N," pages 266, 267, 268, and 269.

115 Given under my hand and the seal of said court this 24th day of July A. D. 1848.

[L. S.] W. L. ROBARDS, *Clk.*

Filed for record 24th July, 1848.

W. L. ROBARDS, *Clk.*

Recorded same day in book N, pages 267, 268, & 269.

W. L. ROBARDS, *Clk.*

Filed June 1st, 1869.

G. T. SWANN, *Clk.*

Subpœna.

U. S. OF AMERICA,
Southern District of Mississippi, sc:

The President of the United States to the marshal of the southern district of Mississippi, greeting:

You are hereby commanded, without delay, to summon Alexander B.

Montgomery and Davidella Montgomery, his wife, citizens of the State of Mississippi, residing in the southern district thereof, to be and appear before the circuit court of the United States for the southern district of Mississippi, at the city of Jackson, at rules to be holden in the clerk's office of said court, on the first Monday in August next, to answer *to answer* a bill in equity exhibited against them by Charles Bosley,
116 who is a citizen of the State of Tennessee; and unless they shall enter their appearances therein in the clerk's office aforesaid on or before the time specified above, the bill will be taken for confessed; and have then there this writ, and how you have executed the same.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, and the seal of our said circuit court, this 1st day of June, A. D. 1867, and in the 91st year of the Independence of the United States of America.

[L. S.] GEO. T. SWANN, *Clk.*

Served in person upon the within-named A. B. Montgomery (Davidella Montgomery, his wife, not found in this district) in person, by giving him a copy of the within summons, dated July 6th, 1867.

R. H. WINTER, *Marshal,*
Pr. S. M. D. VERNON, *Dep'y Marshal.*

Appearance.

UNITED STATES OF AMERICA:

Circuit court, southern district of Missi.

CHARLES BOSLEY
vs.
A. B. MONTGOMERY ET AL. } In equity.

117 And the defendants, Alexander B. Montgomery and Davidella Montgomery, his wife, by their solicitor, enter their appearance herein.

W. L. NUGENT,
Solicitor.

OCTOBER 4, 1867.

Filed Octo. 4, 1867.

G. T. SWANN, *Clk.*

Pro confesso.

CHARLES BOSLEY
vs.
A. B. MONTGOMERY ET AL. } In equity. No. 15.

The defendants, Alexander B. Montgomery and Davidella Montgomery, having entered their appearance at the October rules, and failing to plead, answer, or demur, and made default, it is ordered that the bill of complaint and the allegations thereof be taken for confessed and admitted to be true, and that this cause be proceeded in ex parte. It is further ordered that this cause be referred to the clerk of this court as a commissioner, to compute and report the amount due on the debt and deed of trust in the pleadings mentioned.

GEO. T. SWANN, *Clk.*

Ent'd M. B., 2-7-8. 5th Nov., 1867.

118 *Report of commissioner.*

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Circuit court, November term, 1867.

CHARLES BOSLEY
vs.
ALEXANDER B. MONTGOMERY ET AL. } In equity. No. 15.

George T. Swann, the clerk of this court, to whom this case was referred as a commissioner to compute the amount due on the debt and *and* deed of trust in the bill mentioned, respectfully reports that he finds there is now due on said debt and deed of trust the sum of twenty-two thousand one hundred and sixty and sixty-six $\frac{66}{100}$ dollars, being principal and interest, to wit:

Amount of principal of bond dated July 13th, 1848, due ten years after date	$14,000 00
Interest on same from 13th July, 1860, to this date at 8 per cent. per ann., seven years three months and a half	8,166 66
Making above amount	22,166 66

The interest due on said bond from date till 13th July, 1860, had been paid, and was credited on said bond. All of which is respectfully submitted.

GEO. T. SWANN, *Commr.*

NOV. 6TH, 1867.

Filed Nov. 6th, 1867.

GEO. T. SWANN, *Clk.*

119 *Confirmation of report.*

CHARLES BOSLEY
vs.
A. B. MONTGOMERY ET AL. } In equity. No. 15.

It is ordered by the court that the report of George T. Swann, the clerk of this court, to whom this case was referred to compute the amount due on the debt and deed of trust in the pleadings mentioned, be, and the same is hereby, confirmed. It is further ordered that the sum of ten dollars be paid to the said commissioner for said computation and report, and that the same be taxed in the costs of this suit.

Entered in M. B., chancery, page 32, Nov. 6, '67.

G. T. SWANN, *Clk.*

Final decree.

Circuit court of the United States, southern district of Mississippi. November term, 1867.

CHARLES BOSLEY
vs.
A. B. MONTGOMERY ET. AL. } In equity. No. 15.

Be it remembered that this cause came on to be heard before the Hon. Robert A. Hill, judge, &c., on the bill and exhibits to the

120 same, the pro confesso taken against all the defendants, which said pro confesso is hereby declared to be absolute, and on the report of George T. Swann, the clerk of this court, to whom the cause was referred, as commissioner to examine and report to this court the amount due to complainant upon the bill single in complainant's bill mentioned; and it appearing from said report, which is hereby in all things ratified and confirmed, that there is due to complainant by the defendant, Alexander B. Montgomery, the sum of twenty-two thousand and one hundred and sixty-six $\frac{66}{100}$ dollars on the bill single, secured by the deed of trust in the bill mentioned; and it further appearing to the court that the complainant is entitled to the relief as prayed for in the bill; it is therefore ordered, adjudged, and decreed that Alexander Yerger be, and he is hereby, appointed a trustee in the place and stead of John Overton, the trustee mentioned in the deed of trust, and who resides beyond the jurisdiction of this court and who has refused to act as trustee. The court further orders, adjudges, and decrees that
121 unless the said Alexander B. Montgomery shall pay to complainant, within ten days from this date, the sum of money due as aforesaid, then it shall be the duty of said Alexander Yerger forthwith, upon the request of the complainant, to proceed to execute said deed of trust. And he shall expose the property in said deed of trust mentioned, in Exhibit B to complainants' bill, for sale for the purpose of paying said debt to complainant, and which sale shall be made for cash and at the door of the court-house of Washington County, after advertisement and notice shall have been given of the time and place and terms of sale for the length of time and in the manner provided in said deed of trust. And the said Alexander Yerger, trustee as aforesaid, is hereby authorized and empowered to take, and the defendants are ordered and directed to deliver, possession of the property aforesaid, for the purpose of making said sale. And at said sale, trustee, shall and may take bid or bids of complainant to the amount of his said debt and interest, and, instead of cash, the receipt of complainant to be credited on the amount due as aforesaid. And said trustee shall and may
122 make a deed to the purchaser at said sale and place such purchaser in possession of said property, and return said deed, with his report, showing how this decree has been executed, with all convenient dispatch.

It is further ordered that the costs of this suit, to be taxed, be paid out of the proceeds of said sale, if sufficient to pay the amount due to complainant, and also the costs; and if said proceeds are not sufficient, then by said defendant; and that execution therefor may issue as at law. And it is also ordered that George T. Swann, clerk, &c., and commissioner as aforesaid, be allowed a fee of ten dollars for his report filed and referred to herein. Thus ordered and decreed this 6th November, 1867.

ROBERT A. HILL, [SEAL.]
Judge, &c.

Entered min.-book, ch'y, pages 32, 33, 34, this 6th of Nov. 1867.
G. T. SWANN, *Clk.*

Modified decree.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Circuit court, November term, 1867.

CHARLES BOSLEY
vs.
A. B. MONTGOMERY ET. AL. } N. S., 15.

123 By consent of the complainant the court orders, adjudges, and decrees that the decree rendered in this cause on the 6th day of November, instant, be modified in the following particulars, to wit: The trustee appointed by said decree, instead of selling the tract of land mentioned therein entirely for cash, shall sell the same to be paid for one-half in cash at the time of said sale, and the remainder to be paid in twelve months from the day of sale, for which last payment the purchaser shall execute his bond payable to complainant, bearing interest at the rate of eight per cent. per annum from the day of sale till paid, and for the payment of which bond a lien is hereby retained upon the land sold; and the trustee shall express in the deed that he makes to the purchaser that such lien is retained. Should the tract of land sell for more than enough to pay the debt due complainant, the overplus shall be paid to defendant, Alexander B. Montgomery; and should the purchaser of said tract of land fail to pay the bond aforesaid at its maturity, then the trustee, aforesaid, or a commissioner, to be appointed by this
124 court, shall, at the request of the complainant, proceed forthwith to sell said tract of land for the purpose of paying said bond; which sale shall be made to the highest bidder, for cash, in front of the court-house, in Washington County, after thirty days' notice of the time and place and terms of sale being given, by posting the same on the door of said court-house; and out of the proceeds of said sale, the said bond, and all costs accruing from the failure to pay said bond shall be paid, and any surplus shall be paid to the party making said bond, or his order. The original decree, except as herein modified, to stand in full force, and be executed as therein directed. Thus ordered, adjudged, and decreed, this 15th day of November, 1867.

ROBERT A. HILL, *Judge.*

Report of trustee.

CHARLES BOSLEY
vs.
A. B. MONTGOMERY. } In equity. No. 15

To the judges of the circuit court of the United States for southern district of Mississippi:

Alexander Yerger, trustee, appointed by the court in the cause
125 aforesaid, respectfully reports that the defendant, Alexander B. Montgomery, having failed to pay to complainant the sum of money due and provided to be paid by the final decree rendered in this cause, thereupon, at the request of complainant, this trustee exposed to public sale the lands described in the deed of trust referred to in said final decree, first giving notice of the time and place of sale, as required by said decree and said deed of trust. And at said sale said lands were offered upon the terms provided in said decree. And thereupon the

complainant, Charles Bosley, bid for the same the sum of seven thousand and five hundred dollars, and this being the highest, last, and best bid, the said lands were knocked off to him, and he became the purchaser.

This trustee has executed a deed conveying said lands to said Charles Bosley, which he here files, marked "Exhibit A," to this report. He also files herewith, marked "B," the receipt of said Charles Bosley, for the sum of seven thousand and five hundred dollars, being the amount of the said Charles Bosley's bid, and for which said final
126 decree is entitled to a credit. And he asks that he be allowed the sum of one hundred dollars for executing this trust.

ALEX. YERGER, *Trustee.*

Filed 28 March, 1868.

GEO. T. SWANN, *Clk.*

Deed.

This indenture, made and entered into on this February 8th, in the year 1868, between Alexander Yerger, trustee, &c., of the first part, and Charles Bosley of the second part, witnesseth that whereas, at the November term, 1867, of the circuit court of the United States for the southern district of Mississippi, the party of the first part was substituted as trustee in a certain deed of trust referred to in final decree rendered at said term of said court in a case in equity (N. S., No. 15) wherein said party of the second part was complainant and Alexander B. Montgomery and Davidella Montgomery, his wife, were defendants; and whereas it was provided in said decree that in case of the failure of the defendant, Alexander B. Montgomery, to pay the amount due by him to the complainant as rendered in said decree, that then the party
127 of the first part, as trustee as aforesaid, should sell certain lands set forth and described in said deed of trust for the purpose of paying the amount due as aforesaid; and whereas the defendant Alexander B. Montgomery has failed to pay said sum, and said lands have been duly advertised as provided in said deed of trust and final decree and sold to the said Charles Bosley, the party of the second part, in the manner and upon the terms provided in said decree:

Now, therefore, in consideration of the premises and of the payment by the said Charles Bosley to the party of the first part of the sum of seven thousand and five hundred dollars, the receipt of which is hereby acknowledged, the said party of the first part has this day bargained and sold, aliened and conveyed, and by these presents does bargain and sell, alien and convey unto the said Charles Bosley and his heirs, forever, all of the following described tracts or parcels of land, being the lands described in the deed of trust aforesaid, to wit: Section twelve, township seventeen, range nine, west of the basis line of the
128 Choctaw district, being six hundred and forty (640) acres; also, the west half of section thirteen, same township and range, being three hundred and twenty (320) acres; also, the southwest quarter of section nine, same township and range, being one hundred and sixty (160) acres; also, a fraction of the south half of section ten, same township and range, being two hundred and sixty (260) acres; also, a fraction of the south half of section eleven, same township and range, being one hundred (100) acres; also, an undivided half of the east half of section fourteen, same township and range, being, when divided, one hundred and sixty (160) acres; also, the undivided half of the southwest quarter of section fifteen, same township and range, being, when divided, eighty (80) acres; also, the east half of section thirteen and the west half of

section fourteen, same township and range, being six hundred and forty (640) acres; in all, twenty-three hundred and sixty (2,360) acres of land, more or less; to have and to hold the aforesaid tracts or parcels of land to the said party of the second part and his heirs forever, to-
129 gether with all the hereditaments and appurtenances to the same belonging.

In witness of which the said party of the first part has hereunto set his hand and affixed his seal this, the day and year first above written.

ALEX. YERGER. [SEAL.]

STATE OF MISSISSIPPI,
Washington County:

Personally appeared before me, R. L. Dixon, judge of the probate court of said county, Alexander Yerger, whose name is affixed to the foregoing indenture, and acknowledged that he signed, sealed, and delivered the same, as his act and deed, on the day and year therein named.

Witness my hand and seal this 23rd day of March, 1868.

R. L. DIXON, [SEAL.]
Judge, &c.

In the circuit court of the United States, for the southern district of Mississippi.

I, George T. Swann, clerk of the circuit court in and for said southern district of Mississippi, do herely certify that the foregoing 31 pages
130 and this page contain a true, full, and perfect transcript of the record in the case of Charles Bosley vs. A. B. Montgomery et al., No. 15, as the same remains in my office.

Witness my hand and seal of said court this 16th day of July, A. D. 1869.

[SEAL.] GEO. T. SWANN, *Clk.*

(Endorsed:) Exhibit "1," filed & ent'd Aug. 14th, 1869. G. T. Swann, clk.

Exhibit No. 2, to said answer of Victor Montgomery et al. is as follows, to wit:

In the circuit court of the United States for the southern district of Mississippi.

Pleas and proceedings had and done before the honorable Robert A. Hill, judge of the circuit court of the United States for the southern district of Mississippi, at a regular term thereof, began and held in and for said district at the court-room in the city of Jackson, on the 8th day of July, A. D. 1868.

Be it remembered that heretofore, to wit, on the twenty-seventh
131 day of March, A. D. 1868, the complainant, Charles Bosley, filed in the clerk's office of said court his certain bill of complaint, together with an exhibit thereto marked "A" against the defendants, Alexander B. Montgomery, Davidella Montgomery, wife of said A. B Montgomery, and Alexander Yerger, which, with the subpœna which issued thereon and other proceedings, are in the words and figures following, to wit:

Bill in nature of suppl. bill.

CHARLES BOSLEY
vs.
ALEX. B. MONTGOMERY, ALEX. YERGER, ET AL.

Bill.

To the honorable the judge of the circuit court of the United States sitting in equity at Jackson for the southern district of Mississippi:

Charles Bosley, who is a citizen of the State of Tennessee, brings this bill of complaint against Alexander B. Montgomery and Davidella, his wife, and Alexander Yerger, who are citizens of the State of Mississippi, residing in the southern district aforesaid, defendants.

Complaining, your orator shows that on the 13 day of July, in
132 the year 1848, the defendants, Alexander B. Montgomery and his wife, Davidella, conveyed by deed of that date to John Overton, who is now a citizen and resident of the State of Tennessee, a certain tract of land, situated in the county of Washington, and State of Mississippi, containing in all twenty-three hundred and sixty acres, more or less, and also a large number of slaves, then the property of said Montgomery; said conveyance was made in trust to said Overton, to secure the payment of a bond or bill single made by said Alexander B. Montgomery for $14,000, payable ten years after date to your orator, and also the annual interest accruing on the same. A copy of said deed of trust marked "A" is here filed as a part of this bill. The said Montgomery paid the interest on said bill single until the year ; after that he failed to pay the interest on the same, and never paid any part of the principal. Finding that he had so failed, and there being a large sum of principal and interest due to your orator, he applied to the said Overton, trustee as aforesaid, to execute the trusts of said deed, and
133 to sell said land, as he was authorized and required to do, for the purpose of paying the amount due to your orator. But the said Overton refused and declined to act, and your orator, thereupon, on the 1st day of June, in the year 1867, filed a bill in this honorable court against the said Alexander B. and Davidella Montgomery, praying for the appointment of another trustee to execute said deed of trust, and make sale of said land for the purpose of paying the amount due as aforesaid to your orator; and such proceeding' were thereupon had in this honorable court, that a decree was rendered in said suit in favor of your orator at the November term, 1867, by which Alexander Yerger was substituted and appointed a trustee in said deed of trust in the place and stead of said Overton; and the court further decreed that unless the said Alexander B. Montgomery should, within ten days from the date of said decree, pay to your orator the sum of money due to him, and the payment of which was secured by said deed of trust, the said Alexander Yerger, as trustee, should forthwith, at the request
134 of your orator, proceed to execute said deed of trusts and expose the property mentioned therein for sale, for the purpose of paying the amount due to your orator, which amount was ascertained by said decree to be, at the date of said decree, the sum of $22,166.66. Your orator here refers to the said decree and the proceedings had in said suit, now on record in this honorable court without making the same at large a part of this bill. Your orator further states that the said Montgomery failed to pay the amount due as aforesaid to your orator, or any part thereof; and thereupon the said Alexander Yer-

section fourteen, same township and range, being six hundred and forty (640) acres; in all, twenty-three hundred and sixty (2,360) acres of land, more or less; to have and to hold the aforesaid tracts or parcels of land to the said party of the second part and his heirs forever, to-
129 gether with all the hereditaments and appurtenances to the same belonging.

In witness of which the said party of the first part has hereunto set his hand and affixed his seal this, the day and year first above written.

ALEX. YERGER. [SEAL.]

STATE OF MISSISSIPPI,
Washington County:

Personally appeared before me, R. L. Dixon, judge of the probate court of said county, Alexander Yerger, whose name is affixed to the foregoing indenture, and acknowledged that he signed, sealed, and delivered the same, as his act and deed, on the day and year therein named.

Witness my hand and seal this 23rd day of March, 1868.

R. L. DIXON, [SEAL.]
Judge, &c.

In the circuit court of the United States, for the southern district of Mississippi.

I, George T. Swann, clerk of the circuit court in and for said southern district of Mississippi, do herely certify that the foregoing 31 pages
130 and this page contain a true, full, and perfect transcript of the record in the case of Charles Bosley vs. A. B. Montgomery et al., No. 15, as the same remains in my office.

Witness my hand and seal of said court this 16th day of July, A. D. 1869.

[SEAL.] GEO. T. SWANN, *Clk.*

(Endorsed:) Exhibit "1," filed & ent'd Aug. 14th, 1869. G. T. Swann, clk.

Exhibit No. 2, to said answer of Victor Montgomery et al. is as follows, to wit:

In the circuit court of the United States for the southern district of Mississippi.

Pleas and proceedings had and done before the honorable Robert A. Hill, judge of the circuit court of the United States for the southern district of Mississippi, at a regular term thereof, began and held in and for said district at the court-room in the city of Jackson, on the 8th day of July, A. D. 1868.

Be it remembered that heretofore, to wit, on the twenty-seventh
131 day of March, A. D. 1868, the complainant, Charles Bosley, filed in the clerk's office of said court his certain bill of complaint, together with an exhibit thereto marked "A" against the defendants, Alexander B. Montgomery, Davidella Montgomery, wife of said A. B Montgomery, and Alexander Yerger, which, with the subpœna which issued thereon and other proceedings, are in the words and figures following, to wit:

Bill in nature of suppl. bill.

CHARLES BOSLEY
vs.
ALEX. B. MONTGOMERY, ALEX. YERGER, ET AL.

Bill.

To the honorable the judge of the circuit court of the United States sitting in equity at Jackson for the southern district of Mississippi:

Charles Bosley, who is a citizen of the State of Tennessee, brings this bill of complaint against Alexander B. Montgomery and Davidella, his wife, and Alexander Yerger, who are citizens of the State of Mississippi, residing in the southern district aforesaid, defendants.

Complaining, your orator shows that on the 13 day of July, in
132 the year 1848, the defendants, Alexander B. Montgomery and his wife, Davidella, conveyed by deed of that date to John Overton, who is now a citizen and resident of the State of Tennessee, a certain tract of land, situated in the county of Washington, and State of Mississippi, containing in all twenty-three hundred and sixty acres, more or less, and also a large number of slaves, then the property of said Montgomery; said conveyance was made in trust to said Overton, to secure the payment of a bond or bill single made by said Alexander B. Montgomery for $14,000, payable ten years after date to your orator, and also the annual interest accruing on the same. A copy of said deed of trust marked "A" is here filed as a part of this bill. The said Montgomery paid the interest on said bill single until the year ; after that he failed to pay the interest on the same, and never paid any part of the principal. Finding that he had so failed, and there being a large sum of principal and interest due to your orator, he applied to the said Overton, trustee as aforesaid, to execute the trusts of said deed, and
133 to sell said land, as he was authorized and required to do, for the purpose of paying the amount due to your orator. But the said Overton refused and declined to act, and your orator, thereupon, on the 1st day of June, in the year 1867, filed a bill in this honorable court against the said Alexander B. and Davidella Montgomery, praying for the appointment of another trustee to execute said deed of trust, and make sale of said land for the purpose of paying the amount due as aforesaid to your orator; and such proceeding' were thereupon had in this honorable court, that a decree was rendered in said suit in favor of your orator at the November term, 1867, by which Alexander Yerger was substituted and appointed a trustee in said deed of trust in the place and stead of said Overton; and the court further decreed that unless the said Alexander B. Montgomery should, within ten days from the date of said decree, pay to your orator the sum of money due to him, and the payment of which was secured by said deed of trust, the said Alexander Yerger, as trustee, should forthwith, at the request
134 of your orator, proceed to execute said deed of trusts and expose the property mentioned therein for sale, for the purpose of paying the amount due to your orator, which amount was ascertained by said decree to be, at the date of said decree, the sum of $22,166.66. Your orator here refers to the said decree and the proceedings had in said suit, now on record in this honorable court without making the same at large a part of this bill. Your orator further states that the said Montgomery failed to pay the amount due as aforesaid to your orator, or any part thereof; and thereupon the said Alexander Yer-

ger, trustee as aforesaid, in accordance with the provisions of said decree and deed of trust aforesaid, at the request of your orator, advertised the property in said deed of trust for sale at the time and place and in the manner required by said decree and deed of trust, and on the 8th day of February, in the year 1868, the tract of land in said deed of trust was offered for sale in accordance with the decree, deed of trust, and advertisement, and your orator thereupon bid for the same the sum of $7,500.00; which being the highest, last, and best bid for the same, the said tract of
135 land was struck of' to your orator, and he declared to be the purchaser thereof for the amount of said bid. The report of the sale by said trustee, has not yet been made in said suit, nor has the deed for the said land been made to your orator. But he has been informed that said Alexander Yerger has prepared a deed conveying said land to your orator, and prepared and has ready to file his report in the premises as required by the decree aforesaid. Your orator would further show that since the sale made by the trustee as aforesaid, he has been informed and believes, and therefore states, that a clerical mistake was made in the description of the land conveyed by the deed of trust aforesaid to John Overton. By reference to said deed of trust it will be seen that the said Montgomery conveys sundry pieces or parcels of land situated in the county of Washington, State of Mississippi; in all twenty-three hundred and sixty acres, more or less. Said land is described in said deed by sectional divisions and numbers and township and range,
136 and in said deed of trust is described to be situated in range nine (9) west, of the basis line in the Choctaw district, but in the description there was a mistake. The land owned by said Montgomery, and which he sold and conveyed to said trustee, and which in said deed of trust was intended to be described, was the tract of land belonging to said Montgomery, situated in Washington County aforesaid, on or near Rattlesnake Bayou, and on which said Montgomery had resided, and all situated in range (8) eight west of the basis line in the Choctaw district. The numbers and the divisions of the sections and the township as set forth in said deed of trust are properly descriptive of the lands, and the mistake contained in said deed of trust consists in describing the lands as in range nine (9) west of the basis line in the Choctaw district, when it should have been properly described to be in range eight (8) west of said basis line. The mistake in the description of the range in the deed of trust aforesaid was a clerical mistake, made by the d'aftsman
137 who drew said deed of trust, and arose from an accident or mistake in the description given to him of the land when he prepared the deed of trust; or in his mistaking or misunderstanding the description which was given to him. The said Alexander B. Montgomery did not own any land in range nine (9) aforesaid, except the 160 acres as herein stated, and did own a tract of land containing the sections and divisions of sections set forth and described in said deed of trust, situated in township seventeen, range eight (8) west of basis meridian, and it was that tract of land situated in township eight (8) aforesaid, together with , being 160 acres in range nine (9,) which he sold and conveyed to said Overton, trustee as aforesaid, and which was intended to be described in said trust.

Your orator is advised that he is entitled to have the mistakes in said deed of trust corrected in accordance with the facts, and also the deed of said Alexander Yerger, trustee as aforesaid, conveying the same to him, so that the deed of trust and the deed of said trustee may con-
138 form to the facts, and the title of your orator to the premises be relieved and freed from the embarrassment and doubt which

otherwise would materially affect and prejudice the same to the injury of your orator. Your orator was entirely ignorant that there was any mistake in the description of the land in said deed of trust until the sale was made by Alexander Yerger, the trustee substituted by decree of this court in place of said *Richardson*. Your orator is a citizen of the State of Tennessee, and was at the time said deed of trust was executed, and he received the first information of the mistake in said deed of trust from his solicitor in the cause aforesaid since said sale by said Yerger as aforesaid. The bond or bill single, made by said Montgomery, and the payment of which said deed of trust was intended to secure, was for a loan of money made by your orator to said Montgomery, who agreed, when the loan was made, that he would secure the payment by a deed of trust on his tract of land which he was then cultivating in Washington County, near Greenville, and which tract of land, as before stated was
139 situated in range eight west, and not in range nine (9) west, as by mistake in said deed is stated; and it was the purpose and intention of said Montgomery to convey said tract of land situated in range eight (8) west, as aforesaid, and your orator and said Montgomery both supposed and believed that the land was properly described in said deed of trust, in accordance with such intentions.

In tender consideration, &c., your orator prays that the said Alexander B. Montgomery and Davidella Montgomery, his wife, and the said Alexander Yerger may be made defendants to this bill; that subpœna issue, &c., and they be compelled to appear and answer, &c., and that this bill may be filed as an original bill, in the nature of a supplemental bill to the bill here'fore filed by your orator in this honorable court, as heretofore stated, against the said Montgomery and wife. And your orator prays that your honor will at the final hearing of this bill decree that the mistake in the description of the land aforesaid
140 in the deed of trust to said Overton, and also in the deed made by said Yerger as aforesaid to your orator shall be amended and corrected, and the rights and claims of your orator under the same shall be protected, take effect, and be in force from the date of the original deed of trust, and the deed of said Yerger, trustee, in as full and ample a manner, and to the same effect as if said mistake had not been made therein, and that the rights of your orator under said deed of trust and the deed of the trustee shall not be prejudiced, impaired, or affected in any way by reason of the mistake and misdescription in the land aforesaid; and that the said defendants shall, by the necessary deeds and conveyances, convey said lands with the proper description of the same, setting forth and correcting the mistake as aforesaid, so as to vest in your orator the title to said land, to take effect from the date of the original deed of trust aforesaid, in the same manner and to the same effect and extent if said mistake and misdescription had not been
141 made; or, if mistaken in the relief asked, your orator then prays for such other further and additional relief as in equity he is entitled to. And, as in duty, &c.

W. AND J. R. YERGER, AND
W. YERGER, JR., *Sols.*

Filed March 27th, 1868, and summons issued.

G. T. SWANN, *Clerk.*

Exhibit A to bill.

Know all men by these presents that I, Alexander B. Montgomery, of the county of Washington, State of Mississippi, for and in consideration of one dollar to me in hand paid, the receipt whereof is hereby ac-

knowledged, and also for the other consideration hereinafter named, have this day bargained and sold, and do by these presents bargain, sell, alien, transfer, and convey unto John Overton, of the county of Davidson, State of Tennessee, his heirs and assigns forever, all my right, title, interest, claim, and demand of, in, and to the following-described pieces or parcels of land situated in the county of Washington, State of Mississippi, known and described as follows, namely: Section
142 twelve, (12,) township seventeen, (17,) range nine (9) west of the basis line in the Choctaw district, being six hundred and forty (640) acres; also the west half of section thirteen, same township and range, being three hundred and twenty (320) acres; also the southwest quarter of section nine, (9,) same township and range, being one hundred and sixty (160) acres; also a fraction of the south half of section ten, (10,) same township and range, being two hundred and sixty (260) acres; also a fraction of the south half of section eleven, (11,) same township and range, being one hundred (100) acres; also an undivided half of the east half of section fourteen, (14,) same township and range, being, when divided, one hundred and sixty (160) acres; also the undivided half of the southwest quarter of section fifteen, (15,) same township and range, being, when divided, eighty (80) acres; also the east half of section thirteen, (13,) and the west half of section fourteen, same township and range, being six hundred and forty (640) acres; *a*n all, twenty-three hundred and sixty (2,360) acres of land, more or less.
143 To have and to hold the said pieces or parcels of land, with all the hereditaments and appurtenances thereto in any manner belonging, unto said John Overton, his heirs and assigns, forever, as an indefeasible inheritance in fee-simple. I do further covenant I am lawfully seized of said several pieces, parcels, or tracts of land; have a good right to convey, and the same are unincumbered; and do further covenant with said Overton and his heirs to warrant and defend the title to said several pieces, parcels, or tracts of land against the lawful claim or claims of all and every person or persons whatsoever.

For the consideration aforesaid I do further bargain, sell, transfer, and convey unto said John Overton and his heirs, all my right, title, claim, and interest of, in, and to the following-named negroes, to wit: Jacob, aged about fifty years; Judy, aged about forty-five years; Juliet, aged about thirty years; Phillis, aged about twenty-eight years; Louisa, aged about eight years; Rose, aged about twenty-seven years; Marian, aged about eight years; Boyd, aged about six years; Sarah, aged
144 about twenty years; Isaac, aged about thirty years; General, aged about twenty-two years; Simeon, aged about fifty years; Sam, aged about seventeen years; Emily, aged about twenty two years; Kizzie, aged about eight years; Hampton, aged about twenty five years; Taggs, aged about twenty years; Becky, aged about forty years; Harry, aged about thirty-five years; Charles, aged about seventeen years; Martha, aged about fifteen years; Betsey Ann, aged about eleven years; Fountain, aged about thirty-five years; Jane, aged about thirty years; Joseph, aged about twenty-five years; Winnie, aged about twenty-two years; Calvin, aged about twenty years; Mary, aged about eighte'n years; Clarissa, aged about eighteen years *of age;* Charles, aged about twenty years; G. Mary, aged about twenty years; Dick, aged about twenty-seven years; Sarah, aged about twenty-four years; Dinah, aged about forty years; Unity, aged about eighteen years; Fayette, aged about sixteen years; Pane, aged about fourteen years; Judy, aged about two years; Carter, aged about thirty-four years; Franky, aged about twenty-two years; Dicey, aged about four years;

Stephen, aged about twenty-two years; Candace, aged about
145 twenty years; Esther, aged about twenty-five years; Spencer, aged about twenty-two years; Mary Cox, aged about twenty years; Johnson, aged about twenty-five years; Lewis, aged about twenty-eight years; Matilda, aged about twenty-five years; Lee, aged about six years; Alf, aged about four years; Bob, aged about twenty-five years; Ellen, aged about twenty-five years; Ann, aged about thirty years; Emeline, aged about fourteen years; Bill, aged about twelve years; Loyd, aged about nine years; Peter, aged about forty years; Reese, aged about twelve years; Alex or Ellick, aged about twenty years; Joe, aged about twenty-three years; Jack, aged about twenty years; Bill, aged about eighteen years; Joe, aged about twenty years; Emma, aged about eighteen years; Ephraim, aged about thirty-five years; Winney, aged about twenty-four years; Clarrissa, aged about four years; Emily, aged about eighteen years; Jim Crack, aged about seventeen years; Henry, aged about seventeen years; Andrew, aged about eighteen years *old*; John, aged about forty years; Sally, aged about thirty years; Frank, aged about ten years; Wash, aged about
146 four years; Dennis, aged about twenty-eight years; Rachel, aged about twenty-five years; Priscilla, aged about ten years; Chloe, aged about seven years; Spence, aged about four years; Stephen, aged about thirty-four years; Lucy, aged about thirty years; Louisa, aged about fifteen years; West, aged about ten years; and Betsey Ann, aged about twelve years. I do further covenant that I am the legal owner of all said negro slaves, have a good right to convey, that the same are unincumbered and that said slaves are slaves for life; that I will, unto said Overton, his executors, heirs, &c., warrant and defend the title to each, every, and all of said slaves against the claim or claims of all and every person or persons whatsoever. And for the consideration aforesaid and divers other good and valuable considerations, I, Davidella Montgomery, wife of said Alexander B. Montgomery, do sell, transfer, and convey, and hereby specially release and quit-claim unto said John Overton, his heirs and assigns, all my right, title, claim, interest, or possibility of dower into or out of the aforedescribed several tracts of land and of all the slaves hereinbefore
147 conveyed in fee-simple by my husband, the said Alexander B. Montgomery, unto the said John Overton and his heirs.

But the above deed of conveyance of land and negro slaves is made for the following uses and purposes and no other, that is to say: I have this day borrowed of Charles Bosley the sum of fourteen thousand dollars, which sum he has agreed, upon my paying punctually the annual interest, to let me retain for ten years, to secure which I have this day executed to said Bosley my bond or bill single for said sum of fourteen thousand dollars, payable ten years after date, at the residence of Phillip Hoggatt, the brother-in-law of said Charles Bosley, in Adams County, State of Mississippi, the annual interest on which principal sum of fourteen thousand dollars amounting *amounting*, at the rate of eight per centum per annum, to the sum of eleven hundred and twenty (1,120) dollars, I promise punctually to pay to the order of said Charles Bosley, at the residence of said Col. Phillip Hoggatt, in Adams
148 County, State of Mississippi, on the 13th day of July in the years 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, and 1858, at which last time, namely, on the 13th day of July, 1858, the principal sum of fourteen thousand dollars also becomes due; and it was further agreed that, should I make any default in the payment of the annual instalments of the interest, the principal sum of fourteen

thousand dollars was to become immediately due and payable; all of which fully appears on the face of said bond or bill single executed by me, Alexander B. Montgomery, to Charles Bosley as aforesaid. Now, should I pay punctually the said instalments of interest as they respectively fall due, and also punctually pay said principal sum of fourteen thousand dollars at the time it is due, then this deed of conveyance to be void. But, if I should make default in the payment of any of the annual instalments of the interest as aforesaid, or should I, having paid all the instalments of interest aforesaid, fail to pay said principal sum of fourteen thousand dollars when the same is due as afore-
149 said, then said Overton, as trustee, is authorized and empowered to take said several tracts of land and all said slaves into his possession, and, after twenty days' notice of the time and place of sale, advertised at three public places in Washington County, Mississippi, expose to public sale for cash or on reasonable credit as to him seems better, the tracts of land and all the slaves above conveyed, or a sufficiency of both or either as he may choose, and sell to the highest bidder, and with the proceeds of said sale, after satisfying necessary expenses, pay the amount of instalment of interest due and also principal sum of fourteen thousand dollars, (which latter is to become immediately due in default of payment of the annual interest as aforesaid;) or should I have paid all said instalments of interest as the same regularly fall due, and should fail to pay at maturity said principal sum of fourteen thousand dollars, then in this latter event said Overton is only to pay to said Bosley out of the proceeds of said sale said principal sum of fourteen
150 thousand dollars. In case of a sale said Overton is empowered to make deeds to the purchasers of said lands and slaves. In testimony the said Alexander B. Montgomery and Davidella Montgomery, his wife, have hereunto set their hands and affixed their seals this 13th day of July, in the year 1848. In tenth line from top of first page the words "his heirs and assigns forever," interlined before signing.

A. B. MONTGOMERY. [SEAL.]
DAVIDELLA MONTGOMERY. [SEAL.]

STATE OF TENNESSEE, DAVIDSON COUNTY,
City of Nashville, ss:

Personally appeared before me, John Catron, one of the associate justices of the Supreme Court of the United States of America, in the State, county, and city aforesaid, Alexander B. Montgomery and Davidella Montgomery, his wife, the grantors in the foregoing or within deed or indenture named from them to John Overton, and severally acknowledged the same to be their voluntary act and deed for the uses and purposes therein mentioned; and the said Davidella Montgomery, wife of said Alexander B. Montgomery did moreover, on a private ex-
151 amination made of her by me apart from her husband, acknowledge that she signed, sealed, and delivered the same as her voluntary act and deed freely, without any fear, threats, or compulsion of her said husband; as witness my hand and seal this 13th day of July, 1848.

JOHN CATRON,
Asso. Jus. S. C. U. S.

STATE OF MISSISSIPPI, *Washington County, ss:*

I, Willis L. Robards, clerk of the probate court of said county, hereby certify that the foregoing instrument was this day filed for record and recorded in my office, Book N, pages 266, 267, 268, and 269.

Given under my hand and seal of said court this 24th day of July, A. D. 1848.

[L. S.] W. L. ROBARDS, *Clerk.*

United States of America, southern district of Mississippi, in circuit court.

I, George T. Swann, clerk of the circuit court of the United States for said district, hereby certify that the foregoing pages, 1 to 7 inclusive, contain a true and correct transcript of a deed, marked
152 "Exhibit B to complainant's bill," in a certain cause pending in said court, N. S., No. 15, wherein Chas. Bosley is complainant and Alexander B. Montgomery is deft., as the same remains on file in said court.

Given under my hand and seal of said court hereto affixed at Jackson, in said district, this 13th day of November, A. D. 1867.

[L. S.] GEO. T. SWANN, *Clerk.*

Filed with bill March 27th, 1868.

GEO. T. SWANN, *Clerk.*

UNITED STATES OF AMERICA,
Southern District of Miss., sc:

The President of the United States to the marshal of the southern district of Mississippi, greeting:

You are hereby commanded, without delay, to summons Alexander B. Montgomery and Davidella Montgomery, his wife, and Alexander Yerger, residing in the southern district of Mississippi, who are citizens of the State of Mississippi, to be and appear before the circuit court of the United States for the southern district of Mississippi, at the city
153 of Jackson, at rules, to be holden in the clerk's office of said court, on the first Monday in May next, to answer a bill in equity exhibited against them by Charles Bosley, who is a citizen of the State of Tennessee; and unless they shall enter their appearances therein, in the clerk's office aforesaid, on or before the time specified above the said bill will be taken for confessed. And have then there this writ and how you have executed the same.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme of the United States, and the seal of our said circuit court, this 27th day of March, A. D. 1868, and in the 92nd year of the Independence of the United States of America.

[L. S.] GEO. T. SWANN, *Clerk.*

UNITED STATES OF AMERICA,
Southern District of Mississippi:

U. S. MARSHAL'S OFFICE.

I hereby nominate and appoint James Dixon my special deputy to execute and return the within process according to law.

Witness my hand and seal this 27th day of March, 1868.

[SEAL.]

U. S. Marshal Southern Dist. Miss.

154 Received this writ 4th April, 1868. April 4th, 1868, executed the within writ by reading the same to Alexander Yerger and Alexander B. Montgomery personally, and delivering to each of them

copy of same, and on same day executed this writ on Davidella Montgomery by *reading* copy thereof with Mrs. Wm. Montgomery, a white person over 16 years of age, residing at A. B. Montgomery's, the husband of defendant Davidella Montgomery.

R. H. WINTER,
U. S. Marshal So. Dist. Miss.
By J. DIXON,
Sp'l Dep. Mar.

CHARLES BOSLEY
vs.
A. B. MONTGOMERY ET AL. } In equity. No. 48, N. S.

Complainant asks for a rule upon all the defendants herein to enter their appearances on or before the next rule-day of this court, first Monday in July, or the bill will be taken for confessed and the case set for hearing ex parte.

W. AND J. R. YERGER, *Solrs.*

155 *Pro confesso.*

CHARLES BOSLEY
vs.
A. B. MONTGOMERY ET AL. } In equity. No. 48.

TUESDAY, *July 7th*, 1868.

It appearing to the satsifaction of the court that the process issued herein has been duly executed upon the defendants, Alexander B. Montgomery and Davidella Montgomery, his wife, and Alexander Yerger, and said defendants having failed to enter their appearances herein or to plead, answer, or demur to complainant's bill according to the rules of this court, it is therefore ordered that the rule entered herein at the June rules, 1868, be made absolute, and that the allegations of the complainant's bill against the said defendants be and the same are taken for confessed and admitted as to said defendants, and that the cause proceed ex parte against them.

156 Circuit court, adjourned term, July, 1868.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

CHARLES BOSLEY
vs.
ALEX. B. MONTGOMERY ET AL. } In equity. N. S.

Be it remembered that this cause came on to be heard before the honorable Robert A. Hill, judge, &c., upon the bill, exhibits, and pro confesso taken herein; and now, on this day, the court being sufficiently advised, because it appears that the complainant is entitled to the relief asked for by him, and because it appears that in the deed of *of* trust referred to in complainant's bill, a clerical mistake was made in the description of the land conveyed by said deed of trust to John Overton, the trustee therein named, said land being described in said deed by sectional divisions and numbers, and township and range, and described as situated in "range nine (9) west of the basis line in the Choctaw

district," whereas in truth and in fact the land owned by said
157 Montgomery, and which he sold and conveyed to said trustee, and which in said deed of trust was intended to be described, was the tract of land belonging to said Montgomery, situated in Washington County, in the State of Mississippi, on or near Rattlesnake Bayou, and on which said Montgomery and wife resided, and all situated in range eight (8) west of the basis line in the Choctaw district, and consisting of the same divisions and subdivisions of sections, and situated in the same township as set forth and described in the deed of trust made to said Overton, and in "range 8 west" of the basis line in the Choctaw district, instead of "range (9) nine west of the basis line" as stated in said deed of trust; and whereas it further appears to the satisfaction of the court that the complainant heretofore obtained a final decree in equ'ty in this court in a bill filed by him against the said Alexander B. Montgomery, and Davidella, his wife, by which it was decreed that said lands should be sold for the purpose of paying
158 off the bond or bill single, to secure the payment of which the said deed of trust was given; and whereas the defendant Alexander Yerger was substituted as trustee in the place of said Overton to sell said lands, and did sell and make conveyance of the same to the complainant, who was the purchaser of the same, and in the deed conveying the same the said Alexander Yerger followed the mistake in the deed of trust aforesaid to said Overton, and described said lands as situated in "range 9," instead of "range 8," as aforesaid; and whereas the complainant is entitled to have the mistake in said deed of trust corrected in accordance with the facts, and also the deed of said Alexander Yerger, trustee as aforesaid, conveying the same also corrected, so that the same shall conform to the facts as prayed for in his bill: The court therefore orders, adjudges, and decrees that the defendants, Alexander B. Montgomery and Davidella, his wife, and Alexander Yerger, trustee, substituted in the place of John Overton, as aforesaid, shall, within thirty days from this date, by proper deeds and convey-
159 ances, convey the lands aforesaid with the proper descriptions of the same, setting forth and correcting the mistake as aforesaid, so as to vest in complainant the title to said lands, to take effect from the date of the original deed of trust aforesaid, in this same manner and to the same effect and extent as if the mistake and misdescription had not been made; and in the event of the neglect or failure of the defendants from any cause to execute the same, in that event R. H. Winter, marshal of this district, is hereby appointed a commissioner of this court to make conveyance of said lands as aforesaid.

It is further ordered that the complainant pay the costs of this suit to be taxed, &c.

Ordered, adjudged, and decreed this July 8th, 1868.

ROBERT A. HILL. [SEAL.]

Circuit court of the United States, southern district of Mississippi.

I, George T. Swann, clerk of the circuit court of the United States in and for said southern district of Mississippi, do hereby certify that the foregoing twenty-eight pages, and this page, contain a true
160 and complete transcript of the record in the case of Chas. Bosley vs. A. B. Montgomery et al., No. 48, as the same remains in my office.

Witness my hand and seal of office this 16th day of July, A. D. 1869.

[L. S.] GEO. T. SWANN, *Clerk.*

Filed and entered Aug. 14, 1869.

G. T. SWANN, *Clk.*

(Here follows 3 diagrams, marked pages 161, 162, 163.)

164 And on the 1st day of November, 1869, came the complainants herein, by attorneys, and filed their replication to the answers of the defendants A. B. Montgomery and Victor Montgomery, filed herein, as follows, to wit:

Replication.

In the circuit court of the United States, November term, 1869.

THE NEW ORLEANS CANAL AND BANKING CO. et al. *vs.* A. B. MONTGOMERY ET AL. } In equity. 99.

These replicants, saving and reserving to themselves all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answers of the said defendants A. B. Montgomery and Victor Montgomery, for replication thereunto, saith that they will and do aver, maintain, and will prove their said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants A. B. Montgomery and Victor Montgomery, and that the answer of the said defendants is very uncertain,
165 evasive, and insufficient in the law to be replied unto by these repliants; without that, that any other matter or thing in the said answers contained, material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true; all which matters and things these repliants are ready to aver and prove as this honorable court shall direct, and humbly pray as in and by their said bill they have already prayed.

H. F. COOK.
T. A. AND M. MARSHALL,
For Repliants.

Filed and ent'd Nov. 1st, 1869.

G. T. SWANN, *Clk.*

And on the 8th day of February, 1871, the following proof of debt was filed in this cause, to wit:

Proof of debt.

EXHIBIT B.

Statement of account due La. State Bank by A. B. Montgomery and W. B. Montgomery, Dr.

To note dated May 22d, 1866, drawn at Greenville, Miss., and payable in two years to the order of the payers and by them endorsed, and due May 22–25, 1868, with interest at 6 % per annum from Jan'y 1st, 1866, until paid. Say note for $2,829.25, whereof the con-
166 sideration is money loaned.

(MEMO.—The original of this note is filed with proof of claim in the matter of the estate of W. P. Montgomery, bankrupt.

VALLIANT.)

Form No. 23.—Declaration for proof of debt by officer of corporation.

In the district court of the United States for the district of Mississippi.

IN THE MATTER OF A. B. MONTGOMERY, bankrupt. } In bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

I, Samuel H. Kennedy, of New Orleans, in the parish of New Orleans and State of Louisiana, president of the Louisiana State Bank, being a corporation incorporated by and under the laws of the State of Louisiana, and carrying on business at New Orleans, in the State of Louisiana, being duly sworn, do solemnly declare that I am such officer, and duly authorized to make this proof, and that the statement of the debt between the said corporation and the said bankrupt hereunto annexed is a full, true, and complete statement of account between the said
167 corporation and the said bankrupt, and that it is within my own knowledge that the debt thereby appearing to be due from the estate of said bankrupt to the said corporation was incurred on or before the 26th day of May, 1868, and for the consideration therein stated; and that, to the best of my knowledge and belief the said debt remains unpaid and unsatisfied. And I do further declare that said claim was not procured for the purpose of influencing the proceedings under said act, and that no bargain or assignment, express or implied, has been made or entered into by or on behalf of said corporation to sell, transfer, or dispose of the said claim, or any part thereof, against such bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of such corporation or of any person in the proceedings under said act was, is, or shall be in any way affected, influenced, or controlled. Evidenced by the note attached to proof against the estate of W. P. Montgomery, in bankruptcy, marked "Exhibit A" and the statement marked "Exhibit B."

SAM'L H. KENNEDY,
Pres'd't La. State Bank.

168 Declared, under oath, at New Orleans, this 14th day of January, A. D. 1871; and this proof is satisfactory.

Before me.

C. S. KELLOGG,
Register in Bankruptcy.

Filed Feb'y 8th, 1871.

G. T. SWANN, *Clk.*

And on the 7th day of May, 1872, came the complainants, by attorneys, and filed their replication to the answers filed herein by the defendants, William F. Montgomery and Davidella Montgomery, as follows, to wit:

Replication.

In the circuit court of the United States. In equity.

NEW ORLEANS CANAL AND BANKING CO. ET AL. *vs.* A. B. MONTGOMERY ET AL. } Replication. 99.

These repliants, saving and reserving to themselves all and all man-

ner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiences of the answers of
169 the said defendants William F. Montgomery and Davidella Montgomery, for replication thereto, saith they will and do aver and maintain, and will prove their said bill to be true, certain, and sufficient in law to be answered unto by said defendants, William F. Montgomery and Davidella Montgomery, and that the answers of the said defendants is uncertain, evasive, and insufficient in the law to be replied unto by these repliants; without that any other matter or thing in the said answers contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these repliants are ready to aver and prove as this honorable court shall direct, and humbly pray as in their bill they have already prayed.

H. F. COOK,
MARSHALLS AND JOHNSTONS,
For Repliants.

Filed May 7th, 1872.

G. T. SWANN, *Clk.*

170 And on the 17th day of December, 1869, the following petition of George W. Bancker & Co. was filed in this cause, to wit:

Petition of George W. Bancker & Co.

To the judges of the circuit court of the United States for the southern district of Mississippi:

Your petitioners, George W. Bancker and C. T. Buddecke, partners, conducting business under the name, firm, and style of George W. Bancker & Co., both citizens of the State of Louisiana, respectfully represent unto your honors that they are the owners and holders of a certain promissory note for $5,000.00 (five thousand dollars) made by one A. B. Montgomery to the order of himself, and by him endorsed, dated May 22nd, 1866, and payable three years after date at the counting-house of Estlin & Co., in the city of New Orleans, with interest from the first of January, 1866, at rate of 6 per cent. per annum till final payment. This promissory note is one of sixty promissory notes for different amounts, amounting in the aggregate to the sum of one hundred and fifty-eight
171 thousand seven hundred and seventy-seven $\frac{55}{100}$ dollars, secured by a deed of trust made by the said A. B. Montgomery on the 22nd day of May, A. D. 1866, to William L. Nugent and William G. Yerger, trustees, for Robert W. Estlin, Robert Y. Black, and Henry Thornhill, and Charles J. Estlin, the members of the then late firm of R. Estlin & Co., said deed conveying a certain large and valuable tract of land situate in the county of Washington, State of Mississippi, described in said deed particularly by sections, township, and range.

Your petitioners further state that the said A. B. Montgomery was on the day of , A. D. 186 , duly adjudicated a bankrupt under the act of Congress approved March 2, 1867. Petitioners, in accordance with the requirements of the provisions of said act, have duly proved their aforesaid debt as a security debt against the estate of said bankrupt, and the said proof is now referred to and prayed to be made a part of this petition; said proof being on file in the papers in said bankrupts proceedings.

172 Your petitioners would further represent unto your honors that

the Canal and Banking Company of New Orleans, and others holding notes under said deed of trust, have filed their bill in their own behalf and in behalf of all persons holding any said notes in your honorable court against Victor Montgomery and others, No. 99 N. S., in which said bill they seek to subject the said land to the payment of said notes. And, the premises considered, your petitioners pray that an order be made by your honorable court directing that your petitioners be made parties complainant with the original parties to the bill, and that they be entitled as such to the same rights as the original complainants are entitled to; and as in duty bound your petitioners will ever pray, &c.

GEO. W. BANCKER & CO.,
By JOHNSTON AND JOHNSTON,
Their Sols.

Filed Dec. 17th, 1869.

G. T. SWANN, *Clk.*

And afterwards, to wit, on the 25th day of January, 1870, the
173 following order was made in this cause by said court and entered upon the minutes thereof, to wit:

N. O. CANAL AND BANKING CO. *vs.* A. B. MONTGOMERY ET. AL. } N. S. 99.

Upon the hearing of the petition of G. W. Banker & Co. in this cause it is hereby ordered and decreed that they, the said G. W. Banker & Co., be, and are hereby, admitted as parties complainant in and to the original bill filed in this cause, and as such entitled to the same rights as original complainants.

And on the 15th day of July, 1872, the following proofs of debt by the Union Bank of Louisiana, Bank of Louisiana, The New Orleans Canal and Banking Company, Pike, Lapeyre and Brother, and Mrs. C. Shaw were filed in this cause, to wit:

174 *Proof of debt by Union Bank of Louisiana.*

In the district court of the United States for the southern district of Mississippi.

IN THE MATTER OF A. B. MONTGOMERY, bankrupt. } In bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

James Chalaron, of the city of New Orleans, in the parish of Orleans and State of Louisiana, cashier of the Union Bank, being a corporation incorporated by and under the laws of the State of Louisiana, and carrying on business at New Orleans, in the State of Louisiana, being duly sworn, do solemnly declare that I am such officer and duly authorized to make this proof, and that the statement of the notes and interest between the said corporation and the said bankrupt, hereunto annexed, is a full, true, and complete statement of account between the said corporation and the said bankrupt; and that it is within my own knowledge that the debt appearing thereby to be due from said estate of said bankrupt to the said corporation was incurred on or before the
175 22nd day of May, 1866, and for the consideration therein stated;

ner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiences of the answers of
169 the said defendants William F. Montgomery and Davidella Montgomery, for replication thereto, saith they will and do aver and maintain, and will prove their said bill to be true, certain, and sufficient in law to be answered unto by said defendants, William F. Montgomery and Davidella Montgomery, and that the answers of the said defendants is uncertain, evasive, and insufficient in the law to be replied unto by these repliants; without that any other matter or thing in the said answers contained material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true. All which matters and things these repliants are ready to aver and prove as this honorable court shall direct, and humbly pray as in their bill they have already prayed.

H. F. COOK,
MARSHALLS AND JOHNSTONS,
For Repliants.

Filed May 7th, 1872.

G. T. SWANN, *Clk.*

170 And on the 17th day of December, 1869, the following petition of George W. Bancker & Co. was filed in this cause, to wit:

Petition of George W. Bancker & Co.

To the judges of the circuit court of the United States for the southern district of Mississippi:

Your petitioners, George W. Bancker and C. T. Buddecke, partners, conducting business under the name, firm, and style of George W. Bancker & Co., both citizens of the State of Louisiana, respectfully represent unto your honors that they are the owners and holders of a certain promissory note for $5,000.00 (five thousand dollars) made by one A. B. Montgomery to the order of himself, and by him endorsed, dated May 22nd, 1866, and payable three years after date at the counting-house of Estlin & Co., in the city of New Orleans, with interest from the first of January, 1866, at rate of 6 per cent. per annum till final payment. This promissory note is one of sixty promissory notes for different amounts, amounting in the aggregate to the sum of one hundred and fifty-eight
171 thousand seven hundred and seventy-seven $\frac{55}{100}$ dollars, secured by a deed of trust made by the said A. B. Montgomery on the 22nd day of May, A. D. 1866, to William L. Nugent and William G. Yerger, trustees, for Robert W. Estlin, Robert Y. Black, and Henry Thornhill, and Charles J. Estlin, the members of the then late firm of R. Estlin & Co., said deed conveying a certain large and valuable tract of land situate in the county of Washington, State of Mississippi, described in said deed particularly by sections, township, and range.

Your petitioners further state that the said A. B. Montgomery was on the day of , A. D. 186 , duly adjudicated a bankrupt under the act of Congress approved March 2, 1867. Petitioners, in accordance with the requirements of the provisions of said act, have duly proved their aforesaid debt as a security debt against the estate of said bankrupt, and the said proof is now referred to and prayed to be made a part of this petition; said proof being on file in the papers in said bankrupts proceedings.

172 Your petitioners would further represent unto your honors that

the Canal and Banking Company of New Orleans, and others holding notes under said deed of trust, have filed their bill in their own behalf and in behalf of all persons holding any said notes in your honorable court against Victor Montgomery and others, No. 99 N. S., in which said bill they seek to subject the said land to the payment of said notes. And, the premises considered, your petitioners pray that an order be made by your honorable court directing that your petitioners be made parties complainant with the original parties to the bill, and that they be entitled as such to the same rights as the original complainants are entitled to; and as in duty bound your petitioners will ever pray, &c.

GEO. W. BANCKER & CO.,
By JOHNSTON AND JOHNSTON,
Their Sols.

Filed Dec. 17th, 1869.

G. T. SWANN, *Clk.*

And afterwards, to wit, on the 25th day of January, 1870, the
173 following order was made in this cause by said court and entered upon the minutes thereof, to wit:

N. O. CANAL AND BANKING CO. *vs.* A. B. MONTGOMERY ET. AL. } N. S. 99.

Upon the hearing of the petition of G. W. Banker & Co. in this cause it is hereby ordered and decreed that they, the said G. W. Banker & Co., be, and are hereby, admitted as parties complainant in and to the original bill filed in this cause, and as such entitled to the same rights as original complainants.

And on the 15th day of July, 1872, the following proofs of debt by the Union Bank of Louisiana, Bank of Louisiana, The New Orleans Canal and Banking Company, Pike, Lapeyre and Brother, and Mrs. C. Shaw were filed in this cause, to wit:

174 *Proof of debt by Union Bank of Louisiana.*

In the district court of the United States for the southern district of Mississippi.

IN THE MATTER OF A. B. MONTGOMERY, bankrupt. } In bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

James Chalaron, of the city of New Orleans, in the parish of Orleans and State of Louisiana, cashier of the Union Bank, being a corporation incorporated by and under the laws of the State of Louisiana, and carrying on business at New Orleans, in the State of Louisiana, being duly sworn, do solemnly declare that I am such officer and duly authorized to make this proof, and that the statement of the notes and interest between the said corporation and the said bankrupt, hereunto annexed, is a full, true, and complete statement of account between the said corporation and the said bankrupt; and that it is within my own knowledge that the debt appearing thereby to be due from said estate of said bankrupt to the said corporation was incurred on or before the
175 22nd day of May, 1866, and for the consideration therein stated;

and that, to the best of my knowledge and belief, the said debt remains due and unsatisfied. And I do further declare that said claim was not procured for the purpose of influencing the proceedings under said act, and that no bargain or agreement, express or implied, has been made or entered into by or on behalf of said corporation to sell, transfer, or dispose of the said claim, or any part thereof, against such bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever whereby the vote of such corporation or of any person in the proceedings under said act was, is, or shall be in any way affected, influenced, or controlled.

And I further state that said claim is secured by a deed of trust made by the said A. B. Montgomery, on the 22nd day of May, 1866, by which he conveyed to W. L. Nugent and W. G. Yerger, trustees, to secure the payment of said notes now held by said corporation, (as well as other notes held by other persons, amounting, in the aggregate, to the
176 sum of $158,777.55,) the following lands, viz: S. ½ sec. 19, T. 18, R. 7 W.; an undivided ½ of E. ½, and E. ½ N. W. ¼ sec. 8, T. 17, R. 8 W.; S. W.. ¼ sec. 9, same T. and R.; in sec. 10, same T. and R., 194 acres; in S. ½ sec. 11, same T. and R., 109 acres; all of sections 12, 13, & 14, same T. and R.; S. W. ¼ sec. 15, same T. and R., containing, in the aggregate, 3,067 acres, more or less; said land being situated in Washington County, State of Mississippi.

The notes held by the said corporation, and described in and secured by said deed in trust, are now stated as follows:

5 notes for $1,200 each, dated May 22d, 1866, payable at one, two, three, four, and five years after date, bearing 6 % int. from Jan. 1st, 1866, made by A. B. Montgomery to his own order, and by him endorsed, delivered originally to the firm of Estlin & Co. for a valuable consideration, and, as stated in said deed of trust, for "money advanced and loaned," and afterwards transferred by Estlin & Co. for a valuable consideration to said corporation.

Said original notes are now on file in chancery cause of Canal
177 and Banking Co. vs. A. B. Montgomery et al., No. 99, N. S., in cir. ct. U. S., southern district.

I further state that said corporation has not received for said claim any security except the deed in trust above stated. I cannot state the precise value of said land, but, from information and belief, state said lands to be very valuable, and not worth less than $50,000.00.

JAS. CHALARON,
Cashier.

Declared under oath at New Orleans, this the tenth day of May, A. D. 1872, before me; and this proof is satisfactory to me.

C. S. KELLOGG,
Register in Bankruptcy for 1st Congressional District of Louisiana.

Statement of notes and interest due Union Bank, in re A. B. Montgomery, bankrupt.

5 notes for $1,200.00, dated May 22, 1866, payable at 1, 2, 3, 4, and 5 years, respectively, after date, and bearing interest at the rate of 6 % from January 1st, 1866; principal.....	$6,000 00
Int. 6 %, 6 years and 4 mos.....	2,280 00
Total due Union Bank.....	$8,280 00

These notes were originally delivered to firm of Estlin & Co.
178 for advances made to and due from said A. B. Montgomery, and afterwards, by said firm of Estlin & Co., for a valuable consideration, transferred to said corporation prior to the bankruptcy of said A. B. Montgomery.

Filed July 15th, 1872.

G. T. SWANN, *Clk.*
P'r A. McGEHEE, *D'p'ty.*

Proof debt by Bank of Louisiana.

In the district court of the United States for the southern district of Mississippi.

IN THE MATTER OF A. B. MONTGOMERY, bankrupt. } In bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

We, Aristide Miltenberger and E. E. Norton, of the city of New Orleans, in the parish of Orleans and State of Louisiana, assignees in bankruptcy of the Bank of Louisiana, (being a corporation incorporated by and under the laws of the State of Louisiana, and, prior to its act of bankruptcy and the adjudication in bankruptcy against said corporation, carrying on business at New Orleans, in the State of Louisi-
179 ana, said corporation having been adjudicated bankrupt, and said Aristide Miltenberger and E. E. Norton having been duly appointed and qualified as its assignees in bankruptcy by the U. S. district court for the district of Louisiana,) being duly sworn, do solemnly declare that we are duly authorized, as assignees in bankruptcy as aforesaid to make this proof, and that the annexed statement of the notes and interest between the said corporation and the said bankrupt is a full, true, and complete statement of account between said corporation and the said bankrupt, to the best of our knowledge, information, and belief, and that to the best of our information and belief the debt thereby appearing to be due from the estate of said bankrupt A. B. Montgomery to the said corporation, and now due to us as assignees aforesaid, was originally incurred on or before the 22nd day of May, 1866, and for the consideration therein stated; and that to the best of our knowledge, information, and belief the said debt still remains unpaid and unsatisfied. And we do further declare that said claim was not procured for the purpose of influencing the proceedings
180 under said act, and that no bargain or agreement, express or implied, has been made or entered into by or on behalf of said corporation, or by or on behalf of ourselves as assignees as aforesaid, to sell, transfer, or dispose of the said claim or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of said corporation, or our vote or votes as assignees aforesaid, or of any person, in the proceedings under said act, was, is, or shall be, in any way affected, influenced, or controlled.

And we further state that said claim is secured by a deed in trust made by the said A. B. Montgomery on the 22nd day of May, 1863, by which he conveyed in trust to William L. Nugent and W. G. Yerger, trustees, to secure the payment of said notes now held by us, as well as various other notes now held by different persons, in all amounting in the aggregate to $158,777.55, the following described land, viz:

and that, to the best of my knowledge and belief, the said debt remains due and unsatisfied. And I do further declare that said claim was not procured for the purpose of influencing the proceedings under said act, and that no bargain or agreement, express or implied, has been made or entered into by or on behalf of said corporation to sell, transfer, or dispose of the said claim, or any part thereof, against such bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever whereby the vote of such corporation or of any person in the proceedings under said act was, is, or shall be in any way affected, influenced, or controlled.

And I further state that said claim is secured by a deed of trust made by the said A. B. Montgomery, on the 22nd day of May, 1866, by which he conveyed to W. L. Nugent and W. G. Yerger, trustees, to secure the payment of said notes now held by said corporation, (as well as other notes held by other persons, amounting, in the aggregate, to the
176 sum of $158,777.55,) the following lands, viz: S. ½ sec. 19, T. 18, R. 7 W.; an undivided ½ of E. ½, and E. ½ N. W. ¼ sec. 8, T. 17, R. 8 W.; S. W.. ¼ sec. 9, same T. and R.; in sec. 10, same T. and R., 194 acres; in S. ½ sec. 11, same T. and R., 109 acres; all of sections 12, 13, & 14, same T. and R.; S. W. ¼ sec. 15, same T. and R., containing, in the aggregate, 3,067 acres, more or less; said land being situated in Washington County, State of Mississippi.

The notes held by the said corporation, and described in and secured by said deed in trust, are now stated as follows:

5 notes for $1,200 each, dated May 22d, 1866, payable at one, two, three, four, and five years after date, bearing 6 % int. from Jan. 1st, 1866, made by A. B. Montgomery to his own order, and by him endorsed, delivered originally to the firm of Estlin & Co. for a valuable consideration, and, as stated in said deed of trust, for "money advanced and loaned," and afterwards transferred by Estlin & Co. for a valuable consideration to said corporation.

Said original notes are now on file in chancery cause of Canal
177 and Banking Co. vs. A. B. Montgomery et al., No. 99, N. S., in cir. ct. U. S., southern district.

I further state that said corporation has not received for said claim any security except the deed in trust above stated. I cannot state the precise value of said land, but, from information and belief, state said lands to be very valuable, and not worth less than $50,000.00.

JAS. CHALARON,
Cashier.

Declared under oath at New Orleans, this the tenth day of May, A. D. 1872, before me; and this proof is satisfactory to me.

C. S. KELLOGG,
Register in Bankruptcy for 1st Congressional District of Louisiana.

Statement of notes and interest due Union Bank, in re A. B. Montgomery, bankrupt.

5 notes for $1,200.00, dated May 22, 1866, payable at 1, 2, 3, 4, and 5 years, respectively, after date, and bearing interest at the rate of 6 % from January 1st, 1866; principal.....	$6,000 00
Int. 6 %, 6 years and 4 mos.....	2,280 00
Total due Union Bank.....	$8,280 00

These notes were originally delivered to firm of Estlin & Co.
178 for advances made to and due from said A. B. Montgomery, and afterwards, by said firm of Estlin & Co., for a valuable consideration, transferred to said corporation prior to the bankruptcy of said A. B. Montgomery.

Filed July 15th, 1872.

G. T. SWANN, *Clk.*
P'r A. McGEHEE, *D'p'ty.*

Proof debt by Bank of Louisiana.

In the district court of the United States for the southern district of Mississippi.

IN THE MATTER OF A. B. MONTGOMERY, bankrupt. } In bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

We, Aristide Miltenberger and E. E. Norton, of the city of New Orleans, in the parish of Orleans and State of Louisiana, assignees in bankruptcy of the Bank of Louisiana, (being a corporation incorporated by and under the laws of the State of Louisiana, and, prior to its act of bankruptcy and the adjudication in bankruptcy against said corporation, carrying on business at New Orleans, in the State of Louisi-
179 ana, said corporation having been adjudicated bankrupt, and said Aristide Miltenberger and E. E. Norton having been duly appointed and qualified as its assignees in bankruptcy by the U. S. district court for the district of Louisiana,) being duly sworn, do solemnly declare that we are duly authorized, as assignees in bankruptcy as aforesaid to make this proof, and that the annexed statement of the notes and interest between the said corporation and the said bankrupt is a full, true, and complete statement of account between said corporation and the said bankrupt, to the best of our knowledge, information, and belief, and that to the best of our information and belief the debt thereby appearing to be due from the estate of said bankrupt A. B. Montgomery to the said corporation, and now due to us as assignees aforesaid, was originally incurred on or before the 22nd day of May, 1866, and for the consideration therein stated; and that to the best of our knowledge, information, and belief the said debt still remains unpaid and unsatisfied. And we do further declare that said claim was not procured for the purpose of influencing the proceedings
180 under said act, and that no bargain or agreement, express or implied, has been made or entered into by or on behalf of said corporation, or by or on behalf of ourselves as assignees as aforesaid, to sell, transfer, or dispose of the said claim or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of said corporation, or our vote or votes as assignees aforesaid, or of any person, in the proceedings under said act, was, is, or shall be, in any way affected, influenced, or controlled.

And we further state that said claim is secured by a deed in trust made by the said A. B. Montgomery on the 22nd day of May, 1863, by which he conveyed in trust to William L. Nugent and W. G. Yerger, trustees, to secure the payment of said notes now held by us, as well as various other notes now held by different persons, in all amounting in the aggregate to $158,777.55, the following described land, viz:

S. ½ sec. 19, T. 18, R. 7 W., an undivided half of E. ½ and E. ½ N.
181 W. ¼ sec. 8, T. 17, R. 8 W.; the S. ½ sec. 9, same T. and R.; in sec. 10, same T. and R., 194 acres; in S. ½ sec. 11, same T. and R., 109 acres; all of sections 12, 13, and 14, same T. and R.; S. W. ¼ sec. 15, same T. and R., containing, in the aggregate, 3,067 acres; said land being situated in the county of Washington, State of Mississippi.

The notes held by said assignees, and described and fully set forth in said deed in trust, are now stated to be as follows:

3 notes for $6,200 each, all dated May 22, 1866, made by A. B. Montgomery, payable to his own order, and by him endorsed, payable, respectively, at one, four, and five years. These notes were originally delivered to the firm of Estlin & Co. for money loaned by said firm to A. B. Montgomory, and afterwards, for a full and valuable consideration, transferred and delivered to the said corporation, the Bank of Louisiana, and now held and owned by the assignees in bankruptcy of said corporation.

Said notes bear i't at 6 % from Jan. 1st, 1866.

182 We further state that to the best of our knowledge the said corporation did not, nor have we received for said claim *no* other security than that above specified.

We are unable to state the precise value of said lands, but, on information, we suppose said plantation to be valuable, and worth not less than $50,000.00 or $60,000.00.

E. E. NORTON,
AR. MILTENBERGER,
Assignees.

Declared under oath at New Orleans, this 18th day of May, A. D. 1872.

Before me,
[L. S.]

WILLIAM GRANT,
United States Comm'r Dist. of Louisiana.

Statement of notes and interest.

3 notes, each for the sum of $6,200.00, dated May 22, 1866, payable, respectively, one, four, and five years after date, bearing int. 6 % from Jan'y 1st, 1866; principal.....	$18,600 00
Int., 6 years 4 mos., 6 %.....	7,068 00
	$25,668 00

These notes originally delivered to the firm of Estlin & Co., and by said firm delivered and transferred to said corporation, for valuable consideration, by said firm of Estlin & Co., before the bankruptcy of said A. B. Montgomery.

183 Original notes now on file in chancery cause No. 99 N. S., Canal and Banking Company et al. vs. A. B. Montgomery et al., in U. S. cir. ct. for the southern district of Mississippi.

Filed July 15th, 1872.

G. T. SWANN, *Clk.*
P'r A. McGEHEE, *D'p'ty.*

Proof of debt of the New Orleans Canal and Banking Company.

In the district court of the United States for the southern district of Mississippi.

IN THE MATTER OF A. B. MONTGOMERY, bankrupt. } In bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

I, Chevalier Jumonville, of the city of New Orleans, parish of Orleans and State of Louisiana, cashier of the New Orleans Canal and Banking Company, being a corporation incorporated by and under the laws of the State of Louisiana, and carrying on business at the city of New Orleans, in the State of Louisiana, being duly sworn, do solemnly
184 declare that I am such officer, and *and* duly authorized to make this proof, and that the statement of the notes and interest between the said corporation and the said bankrupt hereunto annexed is a full, true, and complete statement of account between the said corporation and the bankrupt, and that it is within my knowledge that the debt thereby appearing to be due from the estate of said bankrupt to the said corporation was incurred on or before the 22nd May, 1866, and for the consideration therein stated; and that, to the best of my knowledge and belief, the said debt still remains unpaid and unsatisfied. And I do further declare that said claim was not procured for the purpose of influencing the proceedings under said act, and that no bargain or agreement, express or implied, has been made or entered into by or on behalf of said corporation, to sell, transfer, or dispose of the said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby
185 the vote of such corporation, or of any person, in the proceedings under said act was, is, or shall be, in any way affected, influenced, or controlled.

And I further state that said claim is secured by a deed in trust made by the said A. B. Montgomery, on the 22nd May, 1866, by which he conveyed in trust to William L. Nugent and William G. Yerger, trustees, to secure the payment of said notes held by said Canal and Banking Company, as well as various other notes described in said deed, in all amounting in the aggregate to $158,777.55, the following described lands, viz: S. ½ of sec. 19, T. 18, R. 7 west; an undivided half of E. ½, and E. ½ N. W. ¼ sec. 8, T. 17, R. 8 west; the S. W. ¼ sec. 9, same T. and R.; in section 10, same T. and R., 194 acres; in S. ½ sec. 11, same T. and R., 109 acres; all of sec. 12, same T. & R.; all of sec. 13, same T. and R.; all of section 14, same T. and R.; southwest quarter sec. 15, same T. and R.; containing in the aggregate 3,067 acres, more or less, situated in the county of Washington, in the State of Mississippi.

The notes held by said corporation and described in the annexed statement are described by dates and amounts, &c., in said
186 deed in trust, and are now again stated to be as follows:

5 notes for the sum of ..... $5,000 00 each;
3 notes for the sum of ..... $2,446 37 each;
2 notes for the sum of ..... $2,446 36 each;

all dated May 22d, 1866, bearing interest at 6% from Jan'y 1st, 1866; all signed by A. B. Montgomery, payable to his own order, and endorsed by him. Said notes were originally delivered to the firm of Estlin & Co.,

for a valuable consideration, as stated and recited in the said deed in trust "for money advanced and loaned" by said Estlin & Co.; said notes for a valuable consideration, before the commencement of proceedings in bankruptcy by A. B. Montgomery, were assigned and delivered by said firm of Estlin & Co. to said corporation.

And I further state that the corporation has for said claim received no other security except the deed in trust above described.

I am unable to state the exact value of the said *bond*, but, upon information and belief, state that it is a very valuable plantation, and worth not less than $50,000.00.

CH. JUMONVILLE, *Cas.*

187 Declared under oath at New Orleans this 10th day of May, A. D. 1872, before me; and this proof is satisfactory.

C. S. KELLOGG,
Register in Bankruptcy for 1st Congressional District of Louisiana.

Statement of notes and interest due to the Canal and Banking Co.

IN THE MATTER OF A. B. MONTGOMERY, bankrupt.

5 notes for $5,000 each	$25,000 00
Int., 6% from Jan'y 1st, 1866, to May 1st, 1872; 6 years, 4 mos	9,500 00
	$34,500 00
3 notes for $2,446.37 each	$7,339 11
Int., 6% from Jan'y 1st, 1866, to May 1st, 1872; 6 y'rs, 4 mos.	2,788 82
	$10,127 93
2 notes for $2,446.36 each	$4,892 72
Int., 6% from Jan. 1st, 1866, to May 1st, 1872; 6 y'rs, 4 mos.	1,859 21
	$6,751 93

Recapitulation.

5 notes and int	$34,500 00
3 notes and int	10,127 93
2 notes and int	6,751 93
Due to said corporation	$51,379 86

188 Said notes were made by A. B. Montgomery, on the 22nd May, 1866, payable to himself, and endorsed by him, and for money loaned and advanced, delivered originally to the firm of Estlin & Co., and afterwards by said firm, for a valuable consideration, assigned and delivered to said corporation. All of said notes bear int. at 6% from Jan'y 1st, 1866, as expressed on faces of said notes. Original notes on file in chancery cause No. 99, N. S. cir. ct. U. S., southern district of Mississippi.

Filed July 15th, 1872.

G. T. SWANN, *Clk*,
P'r A. McGEHEE, *Dep'ty Clk.*

Proof of debt of Pike, Lapeyre & Co.

Proof of debt with security.

In the district court of the United States for the southern district of Mississippi.

IN THE MATTER OF A. B. MONTGOMERY, bankrupt. } In bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

On this 15th day of May, A. D. 1872, before me, M. M. Cohen,
189 U. S. commissioner of said district, personally appeared Paul Blane, of New Orleans, in the parish of Orleans, and State of Louisiana, and who, after being duly sworn and examined, at the time and place aforesaid, upon his oath says that the person, A. B. Montgomery, against whom a petition for adjudication in bankruptcy is filed, was, at and before the filing of the said petition, and still is, justly and truly indebted to the firm of Pike and Brother and Co., composed of this deponent and W. S. Pike and A. Shepperd, successors to Pike, Lapeyre and Bro., in the sum of fourteen thousand and twelve dollars and ninety-six cents, principal, for which said sum of fourteen thousand twelve dollars and ninety-six cents, or any part thereof, this deponent has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use, received any security or satisfaction whatsoever, save and except the deed in trust hereinafter mentioned; that the claim was not procured for the purpose of influencing the proceedings under the act of
190 Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, expressed or implied, has been made or entered into by or on behalf of this deponent to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever whereby the vote of this deponent, or the firm of which deponent is a member, for assignee, or any action on the part of this deponent, or any other person, in the proceedings under said act has been, is, or shall be in any way affected, influenced, or controlled.

Description of the debt and of the property held as security, and estimated value:

Said debt is evidenced by two notes each for $5,000.00 and one note for $4,012.96, dated May 22d, 1866, made by A. B. Montgomery to his own order and by him endorsed. The said notes for $5,000.00, each, payable, respectively, at four and five years after date. Said notes all bear 6% int. from Jan. 1st, 1866. Said notes were originally given to the firm
191 of Estlin & Co. for money loaned by them to A. B. Montgomery. Said notes, with others, amounting in all to the principal sum of $158,777.55 are secured by a deed in trust made by A. B. Montgomery May 22d, 1866, by which he conveyed to W. L. Nugent and W. G. Yerger, trustees, for the security of said notes, the following-described land in Washington County, Mississippi, viz: S. ½ sec. 19, T. 18, R. 7 W., and undivided ½ of E. ½, and E. ½ N. W. ¼ sec. 8, T. 17, R. 8 W.; S. W. ¼ sec. 9, same T. and R.; in sec. 10, same T. and R., 194 acres; in S. ½ sec. 11, same T. and R., 109 acres; all sec. 12; all of sec. 13; all of sec. 14; S. W. ¼ sec. 15, same T. and R., containing in the aggregate 3,067 acres, more or less. Deponent cannot state the precise value of this

plantation. It is a well-improved and valuable place, and, as deponent supposes, is worth not less than $50,000.00.

The original notes herein described are on file in the chancery cause of the Canal and Banking Company vs. A. B. Montgomery et al., No. 99, N. S., in circuit court of the United States for the southern district of Mississippi.

192 Subscribed and sworn to at New Orleans, on the 7th day of June, A. D. 1872, before me.

M. M. COHEN, [L. S.]
United States Commissioner Fifth Circuit and District of Louisiana.

Filed July 15th, 1872.

G. T. SWANN, *Clk.*
P'r ARCHY McGEHEE, *Dep'ty.*

Proof of debt by Mrs. C. Shaw.

Proof of debt with security.

In the district court of the United States for the southern district of Mississippi.

IN THE MATTER OF A. B. MONTGOMERY, bankrupt. } In bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

On this thirteenth day of May, A. D. 1872, before me, M. M. Cohen, United States commissioner of said district, personally appeared Mrs. C. Shaw, of , in the county of , and State of , and who, after being duly sworn and examined, at
193 the time and place aforesaid, upon her oath says that A. B. Montgomery, the person by whom a petition for adjudication of bankruptcy is filed, was, at and before the filing of the said petition, and still is, justly and truly indebted to this deponent in the sum of forty-eight hundred dollars and cents, with interest at 6 % per annum from the 1st day of Jan'y, 1866, for which said sum of forty-eight hundred dollars and cents, and interest as aforesaid, or any part thereof, this deponent has not, nor has any person by her order, or to this deponent's knowledge or belief, for her use, received any security or satisfaction whatsoever, save and except the deed in trust hereinafter mentioned; that the claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; and that no bargain or agreement, expressed or implied, has been made or entered into by or on behalf of this deponent to sell, transfer, or dispose of said claim, or any
194 part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this deponent (or the firm of which this deponent is a member) for assignee, or any action on the part of this deponent, or any other person, in the proceeding under said act, has been, is, or shall be in any way affected, influenced, or controlled.

The above claim is evidenced by four notes for $1,200 each, (making in the aggregate the principal sum of forty-eight hundred dollars,) made by said A. B. Montgomery, all dated May 22, 1866, payable, respectively,

at one, two, three, and four years, to his own order, and by him endorsed, bearing interest 6 % from Jan'y 1st, 1866, and originally delivered to the firm of Estlin & Co., for money loaned and advanced by said firm of Estlin & C'. to said A. B. Montgomery. Said notes were afterwards, for value received, transferred and delivered to this deponent by said firm of Estlin & Co. Said original notes are on
195 file as Exhibits W, X, Y, and Z, in chancery cause of Canal Bank et al. vs. A. B. Montgomery et al., circuit court U. S., south. dist. Miss'i.

Said notes, together with various other notes amounting in the aggregate to $158,777.55, are secured by a deed in trust, made by said A. B. Montgomery on the 22nd May, 1866, in which he conveyed to William L. Nugent and William G. Yerger, trustees, for the security of said notes, (amounting to $158,777.55,) the following lands in Washington County, Mississippi, viz:

S. ½ sec. 19, T. 18, R. 7 W.; an undivided ½ of E. ½, and E. ½ N. W. ¼ sec. 8, T. 17, R. 8 W.; the S. W. ¼ sec. 9, same T. and R.; in sec. 10, same T. and R., 194 acres; in S. ½ sec. 11, same T. and R., 109; all sec. 12, same T. and R.; all sec. 13, same T. and R.; all sec. 14, same T. and R.; S. W. ¼ sec. 15, same T. and R.; containing, in the aggregate, 3,067 acres, more or less.

Deponent cannot state exactly and precisely the value of said lands, but supposes the value to be not less than $50,000.00 or $60,000.00. A large portion of said land is open and in a good state of cultiva-
196 tion, and the plantation is well improved.

CLARISSA SHAW, *Deponent.*

Subscribed and sworn to at New Orleans, Louisiana, on the 13th day of May, A. D. 1872, before me,

M. M. COHEN, [SEAL.]
U. S. Commr., Fifth Circuit and District of Louisiana.

Filed July 15th, 1872.

G. T. SWANN, *Clk.*
Per A. McGEHEE, *D. C.*

And on the 8th day of November, A. D. 1872, the following was entered on the hearing-docket of said court, to wit:

NEW ORLEANS CANAL AND BANKING COMPANY et al. *vs.* VICTOR MONTGOMERY ET AL. } N. S. 99.

On pleadings, exhibits, and proofs and former orders.
Set for hearing November 8th, 1872, by complainants' solicitors.

197 *Proof of debt by William Steven.*

Form No. 21.—Proof of debt with security.

In the district court of the United States for the district of Mississippi.

IN THE MATTER OF A. B. MONTGOMERY, bankrupt. } In bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

On the second day of November, A. D. 1872, before me, C. S. Kellogg,

plantation. It is a well-improved and valuable place, and, as deponent supposes, is worth not less than $50,000.00.

The original notes herein described are on file in the chancery cause of the Canal and Banking Company vs. A. B. Montgomery et al., No. 99, N. S., in circuit court of the United States for the southern district of Mississippi.

192 Subscribed and sworn to at New Orleans, on the 7th day of June, A. D. 1872, before me.

M. M. COHEN, [L. S.]
United States Commissioner Fifth Circuit and District of Louisiana.

Filed July 15th, 1872.

G. T. SWANN, *Clk.*
P'r ARCHY McGEHEE, *Dep'ty.*

Proof of debt by Mrs. C. Shaw.

Proof of debt with security.

In the district court of the United States for the southern district of Mississippi.

IN THE MATTER OF A. B. MONTGOMERY, bankrupt. } In bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

On this thirteenth day of May, A. D. 1872, before me, M. M. Cohen, United States commissioner of said district, personally appeared Mrs. C. Shaw, of , in the county of , and State of , and who, after being duly sworn and examined, at

193 the time and place aforesaid, upon her oath says that A. B. Montgomery, the person by whom a petition for adjudication of bankruptcy is filed, was, at and before the filing of the said petition, and still is, justly and truly indebted to this deponent in the sum of forty-eight hundred dollars and cents, with interest at 6 % per annum from the 1st day of Jan'y, 1866, for which said sum of forty-eight hundred dollars and cents, and interest as aforesaid, or any part thereof, this deponent has not, nor has any person by her order, or to this deponent's knowledge or belief, for her use, received any security or satisfaction whatsoever, save and except the deed in trust hereinafter mentioned; that the claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; and that no bargain or agreement, expressed or implied, has been made or entered into by or on behalf of this deponent to sell, transfer, or dispose of said claim, or any

194 part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this deponent (or the firm of which this deponent is a member) for assignee, or any action on the part of this deponent, or any other person, in the proceeding under said act, has been, is, or shall be in any way affected, influenced, or controlled.

The above claim is evidenced by four notes for $1,200 each, (making in the aggregate the principal sum of forty-eight hundred dollars,) made by said A. B. Montgomery, all dated May 22, 1866, payable, respectively,

at one, two, three, and four years, to his own order, and by him endorsed, bearing interest 6 % from Jan'y 1st, 1866, and originally delivered to the firm of Estlin & Co., for money loaned and advanced by said firm of Estlin & C'. to said A. B. Montgomery. Said notes were afterwards, for value received, transferred and delivered to this deponent by said firm of Estlin & Co. Said original notes are on
195 file as Exhibits W, X, Y, and Z, in chancery cause of Canal Bank et al. vs. A. B. Montgomery et al., circuit court U. S., south. dist. Miss'i.

Said notes, together with various other notes amounting in the aggregate to $158,777.55, are secured by a deed in trust, made by said A. B. Montgomery on the 22nd May, 1866, in which he conveyed to William L. Nugent and William G. Yerger, trustees, for the security of said notes, (amounting to $158,777.55,) the following lands in Washington County, Mississippi, viz:

S. ½ sec. 19, T. 18, R. 7 W.; an undivided ½ of E. ½, and E. ½ N. W. ¼ sec. 8, T. 17, R. 8 W.; the S. W. ¼ sec. 9, same T. and R.; in sec. 10, same T. and R., 194 acres; in S. ½ sec. 11, same T. and R., 109; all sec. 12, same T. and R.; all sec. 13, same T. and R.; all sec. 14, same T. and R.; S. W. ¼ sec. 15, same T. and R.; containing, in the aggregate, 3,067 acres, more or less.

Deponent cannot state exactly and precisely the value of said lands, but supposes the value to be not less than $50,000.00 or $60,000.00. A large portion of said land is open and in a good state of cultiva-
196 tion, and the plantation is well improved.

CLARISSA SHAW, *Deponent.*

Subscribed and sworn to at New Orleans, Louisiana, on the 13th day of May, A. D. 1872, before me,

M. M. COHEN, [SEAL.]
U. S. Commr., Fifth Circuit and District of Louisiana.

Filed July 15th, 1872.

G. T. SWANN, *Clk.*
Per A. McGEHEE, *D. C.*

And on the 8th day of November, A. D. 1872, the following was entered on the hearing-docket of said court, to wit:

NEW ORLEANS CANAL AND BANKING COMPANY et al.
vs.
VICTOR MONTGOMERY ET AL. } N. S. 99.

On pleadings, exhibits, and proofs and former orders.
Set for hearing November 8th, 1872, by complainants' solicitors.

197 *Proof of debt by William Steven.*

Form No. 21.—Proof of debt with security.

In the district court of the United States for the district of Mississippi.

IN THE MATTER OF A. B. MONTGOMERY, bankrupt. } In bankruptcy.

DISTRICT OF LOUISIANA, *ss:*

On the second day of November, A. D. 1872, before me, C. S. Kellogg,

a register in bankruptcy of said district, personally appeared William Steven, of city of New Orleans, in the parish of Orleans and State of Louisiana, and who, after being duly sworn and examined at the time and place aforesaid, upon his oath says that Alexander B. Montgomery, the person by whom a petition for adjudication of bankruptcy is filed, was, at and before the filing of the said petition, and still is, justly and truly indebted to this deponent, William Steven, in the sum of eight thousand four hundred and sixty-three dollars and 83 cents, for which said sum of eight thousand four hundred and sixty-three dollars and eighty-three cents, or any part thereof, this deponent has not, nor
198 has any person by his order, or to this deponent's knowledge or belief, for his use, received any security or satisfaction whatsoever, save and except the deed of trust hereinafter mentioned; that the claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, expressed or implied, has been made or entered into by or on behalf of this deponent to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any property or consideration whatever, whereby the vote of this deponent William Steven, for assignee, or any action on the part of this deponent, or any other person, in the proceedings under said act, has been, is, or shall be in any way affected, influenced, or controlled.

This debt of eight thousand four hundred and sixty-three and $\frac{83}{100}$ dollars is evidenced by five promissory notes in writing, all made by
199 said Alexander B. Montgomery, and all dated May 22d, 1866, each for the sum of twelve hundred dollars, and due as follows: One note due one year after its date; one note due two years after its date; one note due three years after its date; one note due four years after its date, and one note due five years after its date, and all of said five notes payable to said A. B. Montgomery, and by him endorsed; that all of said notes bear interest at the rate of six per centum per annum from the 1st day of January, 1866, until final payment; that each and all of said five promissory notes are secured by a certain deed of trust, executed by said A. B. Montgomery, on the said 22nd day of May, 1866, to Wm. L. Nugent and Wm. G. Yerger, trustees for R. W. Estlin & Co., whereby and wherein the following described real estate and parcels and pieces of land are conveyed to said trustees, to wit: The south half of section nineteen, township eighteen, range seven west, containing 315 acres; an undivided half of the east half, and east half of the northwest quarter of section eight, township seventeen, range eight west, containing two hundred acres;
200 the southwest quarter of section nine, and same township and range, containing one hundred and sixty-two acres; in section ten, same township and range, 194 acres; in south half section eleven, same township and range, 109 acres; all section twelve, same township and range, containing 647 acres; all section thirteen, same township and range, containing 640 acres; all section fourteen, same township and range, containing 640 acres; southwest quarter section fifteen, same township and range, containing 160 acres; in the aggregate, 3,067 acres. All of said several tracts or parcels of land lying, being, and situated in the county of Washington, State of Mississippi, as will more fully appear by reference to said deed of trust, recorded in the office of the probate clerk in and for said county and State, on the 24th day of May, 1866, book S, pages 585 and 586, a copy of which said deed of

trust is hereto annexed, marked "Exhibit A." The said five notes are hereto annexed, marked Exhibits "B," "C," "D," "E," and "F."

201 This deponent claims and insists that his said debt of $8,463.83, due him, is entitled to be paid him out of the proceeds of the sale of said lands, as provided in and by said deed of trust. This deponent estimates the value of said lands to be seventy thousand dollars, more or less.

WILL. STEVEN, *Deponent.*

Subscribed and sworn to at New Orleans, on the 2nd day of November, A. D. 1872; and this proof is satisfactory to me.

Before me,

C. S. KELLOGG,
Register in Bankruptcy.

Filed Nov. 11th, 1872.

G. T. SWANN, *Clk.*

And afterwards, to wit, on the 12th day of November, 1872, a day of the November term, A. D. 1872, of said court, the following decree pro confesso was rendered in this cause by said court, and entered upon the minutes thereof, to wit:

CANAL AND BANKING CO. ET. AL.
vs.
A. B. MONTGOMERY ET. AL. } In equity. N. S. 99.

202 On application of the complainants, by their solicitors, it is ordered by the court that the bill in the above-entitled cause be taken as confessed against the defendants F. Valliant, assignee in bankruptcy of A. B. Montgomery, W. L. Nugent, and W. G. Yerger, and that said cause proceed ex parte as to them, the court being satisfied that process has been duly and legally served upon said defendants, and that they have failed to plead, answer, or demur to said bill.

And it is further ordered by the court, the defendants A. B. Montgomery, Victor Montgomery, Davidella Montgomery, and W. F. Montgomery, by their solicitors of record, consenting, that this order be entered and have the same effect as if it had been taken on the first day of the present term, and before said cause was set for final hearing.

203 And afterwards, to wit, on Tuesday, the 12th day of November, 1872, the same being a day in the November term, A. D. 1872, of said circuit court of the United States for the southern district of Mississippi, the following order was made in this cause by said court, and entered upon the minutes thereof, to wit:

THE NEW ORL. AND CAN. AND BANKING CO.
vs.
A. B. MONTGOMERY ET. ALS. } N. S. 99.

This cause was argued by the counsel for the respective solicitors of the parties on final hearing, and submitted to the court.

On the final hearing of this cause in said court, the following testimony was *was* offered, read, and submitted to the court on behalf of the complainants and defendants herein, to wit:

a register in bankruptcy of said district, personally appeared William Steven, of city of New Orleans, in the parish of Orleans and State of Louisiana, and who, after being duly sworn and examined at the time and place aforesaid, upon his oath says that Alexander B. Montgomery, the person by whom a petition for adjudication of bankruptcy is filed, was, at and before the filing of the said petition, and still is, justly and truly indebted to this deponent, William Steven, in the sum of eight thousand four hundred and sixty-three dollars and 83 cents, for which said sum of eight thousand four hundred and sixty-three dollars and eighty-three cents, or any part thereof, this deponent has not, nor
198 has any person by his order, or to this deponent's knowledge or belief, for his use, received any security or satisfaction whatsoever, save and except the deed of trust hereinafter mentioned; that the claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, expressed or implied, has been made or entered into by or on behalf of this deponent to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any property or consideration whatever, whereby the vote of this deponent William Steven, for assignee, or any action on the part of this deponent, or any other person, in the proceedings under said act, has been, is, or shall be in any way affected, influenced, or controlled.

This debt of eight thousand four hundred and sixty-three and $\frac{83}{100}$ dollars is evidenced by five promissory notes in writing, all made by
199 said Alexander B. Montgomery, and all dated May 22d, 1866, each for the sum of twelve hundred dollars, and due as follows: One note due one year after its date; one note due two years after its date; one note due three years after its date; one note due four years after its date, and one note due five years after its date, and all of said five notes payable to said A. B. Montgomery, and by him endorsed; that all of said notes bear interest at the rate of six per centum per annum from the 1st day of January, 1866, until final payment; that each and all of said five promissory notes are secured by a certain deed of trust, executed by said A. B. Montgomery, on the said 22nd day of May, 1866, to Wm. L. Nugent and Wm. G. Yerger, trustees for R. W. Estlin & Co., whereby and wherein the following described real estate and parcels and pieces of land are conveyed to said trustees, to wit: The south half of section nineteen, township eighteen, range seven west, containing 315 acres; an undivided half of the east half, and east half of the northwest quarter of section eight, township seventeen, range eight west, containing two hundred acres;
200 the southwest quarter of section nine, and same township and range, containing one hundred and sixty-two acres; in section ten, same township and range, 194 acres; in south half section eleven, same township and range, 109 acres; all section twelve, same township and range, containing 647 acres; all section thirteen, same township and range, containing 640 acres; all section fourteen, same township and range, containing 640 acres; southwest quarter section fifteen, same township and range, containing 160 acres; in the aggregate, 3,067 acres. All of said several tracts or parcels of land lying, being, and situated in the county of Washington, State of Mississippi, as will more fully appear by reference to said deed of trust, recorded in the office of the probate clerk in and for said county and State, on the 24th day of May, 1866, book S, pages 585 and 586, a copy of which said deed of

trust is hereto annexed, marked "Exhibit A." The said five notes are hereto annexed, marked Exhibits "B," "C," "D," "E," and "F."

201 This deponent claims and insists that his said debt of $8,463.83, due him, is entitled to be paid him out of the proceeds of the sale of said lands, as provided in and by said deed of trust. This deponent estimates the value of said lands to be seventy thousand dollars, more or less.

WILL. STEVEN, *Deponent.*

Subscribed and sworn to at New Orleans, on the 2nd day of November, A. D. 1872; and this proof is satisfactory to me.

Before me,

C. S. KELLOGG,
Register in Bankruptcy.

Filed Nov. 11th, 1872.

G. T. SWANN, *Clk.*

And afterwards, to wit, on the 12th day of November, 1872, a day of the November term, A. D. 1872, of said court, the following decree pro confesso was rendered in this cause by said court, and entered upon the minutes thereof, to wit:

CANAL AND BANKING CO. ET. AL.
vs.
A. B. MONTGOMERY ET. AL. } In equity. N. S. 99.

202 On application of the complainants, by their solicitors, it is ordered by the court that the bill in the above-entitled cause be taken as confessed against the defendants F. Valliant, assignee in bankruptcy of A. B. Montgomery, W. L. Nugent, and W. G. Yerger, and that said cause proceed ex parte as to them, the court being satisfied that process has been duly and legally served upon said defendants, and that they have failed to plead, answer, or demur to said bill.

And it is further ordered by the court, the defendants A. B. Montgomery, Victor Montgomery, Davidella Montgomery, and W. F. Montgomery, by their solicitors of record, consenting, that this order be entered and have the same effect as if it had been taken on the first day of the present term, and before said cause was set for final hearing.

203 And afterwards, to wit, on Tuesday, the 12th day of November, 1872, the same being a day in the November term, A. D. 1872, of said circuit court of the United States for the southern district of Mississippi, the following order was made in this cause by said court, and entered upon the minutes thereof, to wit:

THE NEW ORL. AND CAN. AND BANKING CO.
vs.
A. B. MONTGOMERY ET. ALS. } N. S. 99.

This cause was argued by the counsel for the respective solicitors of the parties on final hearing, and submitted to the court.

On the final hearing of this cause in said court, the following testimony was *was* offered, read, and submitted to the court on behalf of the complainants and defendants herein, to wit:

COMPLAINANTS' TESTIMONY.

Deposition of Robert W. Estlin.

UNITED STATES OF AMERICA,
District of Louisiana, City of New Orleans:

Be it remembered that on the 5th day of May, A. D. 1870, I, Kilian Loew, a U. S. commissioner, duly appointed by the circuit court of the U. S. for the 5th circuit and district of Louisiana, to take acknowledgments of bail, administer oaths, and to take depositions to be used in cases depending in the courts of the U. S. of America, have caused to appear before me at my office, in the custom-house buildings of this city, to be examined as a witness, de bene esse, Mr. Robert W. Estlin, a witness on behalf of the complainants in a certain suit now pending in the hon. circuit court of the United States for the southern district of Mississippi, wherein the New Orleans Canal and Banking Company et als. are complainants and A. B. Montgomery et al. are defend-
205 ants, said suit being No. 99 of the docket of said court.

And the said examination was taken by me, de bene esse, because the said witness resided at New Orleans, distant more than 100 miles from the city of Jackson, the place where the court in which said suit is pending and to be tried was appointed by law to be held. And no notification was given to said defendants of the time and place appointed for taking the said deposition, to be present at the taking of the same, and to put cross-interrogatories if they saw fit, because the said defts. were not, nor did they have any known agent or attorney within one hundred miles of said place of caption, or taking said deposition, to whom said notification could be given. And I therefore proceeded with said examination; and the said witness being by me carefully examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposeth and saith:

206 My name is Robert W. Estlin, age 54, I was a member of the firm Rob. W. Estlin & Co., of New Orleans. That firm was composed of myself, R. Y. Black, Henry Thornhill, and Chs. T. Estlin. I have known A. B. Montgomery for the last 25 years. He was a customer of ours, and did business with our firm since 1853 up to the close of the war. He began business with the firm of Hill, McLean & Co., and H. R. W. Hill, to which business the firm of R. W. Estlin & Co. succeeded.

The defendant owed our firm for advances, endorsements, &c., on 22 May, 1866, $158,777.55. This indebtedness was settled by the deed of trust that was executed on 22d May, 1866. (Being shown Exhibit A, filed in the said suit on the 7 June, 1869, by the clerk of the court, he says that is the deed of trust that was executed on 22d May, 1866, in settlement of the balance due the firm of Ro. W. Estlin & Co. by A. B. Montgomery, as above set forth.) I did attend to the settlement with Montgomery on behalf of my firm and I took said deed of trust.
207 This deed of trust was prepared in the office of Nugent and Yerger, at Greenville, Mississippi.

I had no knowledge at the time the deed of trust was executed and given to me, that there existed any other mortgage, deed of trust, or incumbrance on the property therein described. On the contrary I examined the records of the clerk's office as far as I was able to do from the confusion then existing, it being just after the close of the war, and could find nothing existing or bearing as a mortgage or deed of trust on

the property described; and further, I was assured and firmly believed that the property was free and unencumbered from any other mortgage than ours.

I examined especially and particularly the records of the court, to find whether or not any mortgage existed on said property in favor of one Charles Bosley, and I found no such mortgage of record. My reason for doing so was that I had understood that Montgomery owed said Bosley a large sum of money, and the same was secured by a
298 deed of trust on Montgomery's property in the city of Nashville, Tennessee; that at any time from 1853 to the beginning of the war, had I been so requested, I would have paid and discharged the debt due by the said Montgomery to the said Bosley to the extent of $20,000, if necessary, as the said Montgomery had full credit with our firm.

A. B. Montgomery was a very large planter; cannot say how many bales of cotton he made annually; should think between 2 and 3,000 bales a year.

RO. W. ESTLIN.

And I do further certify that the preceding deposition was reduced to writing by myself, signed by the witness in my presence after due reading of the same, and that I am not of counsel for either of the parties to the suit, nor interested in the result thereof.

In faith whereof I grant these presents under my signature and the impress of my official seal, at New Orleans, this 5th May, 1870.

[L. S.] K. LOEW, *U. S. Com.*

209 *Deposition of W. R. Trigg.*

In the circuit court of the United States for the southern district of Mississippi.

NEW ORLEANS CANAL AND BANKING CO. et al., *vs.* A. B. MONTGOMERY ET AL. } Chancery.

Interrogatories to be propounded to W. R. TRIGG, esq., a witness for complainants, whose answers are to be read as evidence at the hearing of the above-named cause:

Int. 1. State your name, age, occupation, and residence.

Int. 2. State whether or not you were deputy clerk of the circuit and probate courts of Washington County during the month of May, 1866; and, if yea, under whom were you deputy?

Int. 3rd. State, if you know, who took and certified the acknowledgment of the deed of trust mentioned in the pleadings in this case, in which A. B. Montgomery was grantor, Nugent and Yerger trustees, and Robt. W. Estlin & Co. cestuis que trust, dated 22nd May, 1866.

210 Int. 4th. State whether or not, at or about the time said deed of trust was executed, Robert W. Estlin made any examination of the records of deeds in said probate clerk's office, with a view to ascertain what incumbrances, if any, were on the land embraced in said deed of trust; and if you answer that he did make such examination, state how you knew that he did so, and who, if any one, assisted him in such examination, and state particularly whether or not Mr. Hay-

craft, the clerk, assisted Mr. Estlin in such examination, and your means of knowing what you answer.

Int. 5th. In the examination in which, in your answer to int. 4, you say that you assisted Mr. Estlin, state whether or not you discovered the Bosley deed of trust, which is in controversy in this suit, and state generally the nature and result of that examination.

Cross-ints. to W. R. Trigg:

X-int. 1. Were you not an attorney and counsellor at law dur-
211 ing the year 1866, in regular practice?

X-int. 2. To what extent were you acting during that year as deputy clerk; what was the general nature of your employment as such, and what the contract between you and Mr. W. A. Haycraft, clerk?

X-int. 3. Do you think said Haycraft would have given any certificate as to the mortgages spoken of by you, without a personal examination?

X-int 4th. Did R. W. Estlin, when he was making the examination spoken of, see the Bosley trust-deed? Is said Bosley not recorded in book N of the records of Washington County, at pp. 266 to 270, inclusive? What is the date of said deed, what amount was secured by it, and when did the note given therefor mature? Examine the records, and answer definitely.

X-int. 5th. Did not said trust-deed appear unsatisfied of record?

X-int. 6th. What number of acres were included in the lands therein set out, and what number of slaves were thereby conveyed?

212 X-int. 7. Did not the lands as described in the Bosley trust-deed answer exactly to that set out in the Estlin deed except in the range number alone?

X-int. 8. Had you been taking in your own interest the Estlin deed, what would you have done on reading the Bosley deed? Would your inquiry have been limited to the reading of said deed? Would you not have made further inquiry? Answer fully, and give your reasons for your answers.

X-int. 9. What do you think a reasonable man would have concluded, without any consideration of questions of law as to limitation and misdescription of lands, upon the reading of the Bosley deed? Would he not have concluded from seeing so many slaves conveyed in the deed, that the lands represented the plantation upon which they were working?

X-int. 10. Substituting range eight for range nine in the Bosley deed, would the lands not then have represented the Swiftwater plantation owned by A. B. Montgomery at that time?

X-int. 11. Did A. B. Montgomery at the date of the Bosley
213 deed own any lands in range nine of the description therein set out? If yea, what lands?

X-int. 12. Examine the assessment rolls and records of Washington County, and state who owned and was in the actual possession of the lands as described in the Bosley deed at the time they purported to have been conveyed by A. B. Montgomery.

X-int. 13. When you read the Bosley trust-deed, was it not your opinion, from its perusal, that A. B. Montgomery intended thereby to convey the Swiftwater plantation, as subsequently conveyed to Nugent and Yerger? Would not this have been the opinion of any man at all cautious in business transactions?

X-int. 14. Did Estlin make the examination referred to in your answer to int. 4 before he took the trust-deed from A. B. Montgomery, or after?

X-int. 15. What did you say to Estlin when you discovered the Bosley deed? What remark did he make to you before you made the examination? What did you gather from were his reasons for making it? Did he say anything as to his being informed of its existence?

214 X-int. 16. Did not Estlin, at or about the time he took the trust-deed from A. B. Montgomery, take any other trust-deeds from him or other parties in this county? If he did, examine the records and state from whom, the amounts secured, and the number of acres of land conveyed. Did he make any examination to ascertain if there were any prior incumbrances on these latter lands?

X-int. 17. Are you positive as to where you were on the 22nd and 23rd May, A. D. 1866?

X-int. 18. Was not your opinion that a man of A. B. Montgomery's means would have paid off a debt of the magnitude set out in the Bosley deed the main reason why you thought it satisfied, and was not your idea of its being satisfied the main reason for your thinking there was no lien on Swiftwater plantation?

X-int. 19. Was the question as to a variance between the range number of the Bosley deed and the Estlin deed, and its legal effects, at all canvassed between you and Estlin? If so, what was said by you

215 in that connection, and how? And was that your and Estlin's reason for thinking the Estlin deed a prior lien?

X-int. 20. Please refresh your recollection, and state if the misdescription of range in the Bosley deed was not first ascertained by E. J. Comstock, deputy clerk, after the sale of the Swiftwater plantation under proceedings instituted by Bosley in the United States court. At the time this sale occurred, or was made by Alex. Yerger, com'r., was it not generally thought by you as well as others that the lands comprising the Swiftwater plantation were the lands really sold?

X-int. 21. Please state why you were satisfied in your own mind there was no lien or encumbrance on the lands conveyed in the Estlin deed. Answer fully.

X-int. 22. You say Mr. Estlin seemed to be of the same opinion; please state what he did or said that justified you in making this statement as to his seeming to be so.

X-int. 23. You say the Bosley deed covered different lands from

216 those mentioned in the Estlin deed; please state to what extent they differ.

X-int. 24. Did you and Estlin, at the time you made this examination, know that A. B. Montgomery never did own or have in his possession the lands as set out in the Bosley deed, and that the same were in the adverse possession of others when the Bosley deed was executed?

X-int. 25. What was your legal opinion as to the effect of the misdescription of the range in the Bosley deed? Did you not think this variance necessarily postponed Bosley's lien to that of Estlin? Was not this opinion entertained by Mr. Estlin when he made the examination?

X-int. 26. Do you, as an attorney at law, represent any one of the parties complainant to this cause?

NUGENT AND YERGER,
Attos. for Defendants.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

On this 23rd day of August, A. D. 1871, before W. H. Bolton,

217 a commissioner of the circuit court of the United States for

the southern district of Mississippi, caused to come before me at Greenville, in said district, to be examined as a witness, WYNDHAM R. TRIGG, a witness in behalf of the complainants in a suit pending at Jackson, Mississippi, in the said circuit court, wherein "New Orleans Canal and Banking Company" et als. are plaintiffs, and A. B. Montgomery and others are defendants; the deposition being taken by consent of counsel of both sides. Said witness, being first duly sworn according to law, deposes and says:

Ans. to int. 1. My name is Wyndham R. Trigg; between 37 and 38 years of age; occupation, a lawyer; residence, Greenville, Mississippi.

Ans. to int. 2. I was, under W. A. Haycraft, clerk of those courts.

Ans. to int. 3. I did, as deputy clerk; the deed was dated May 22d, 1866, and the acknowledgment was taken by me, as said deputy, on the 24th day of the same month. I just refreshed my memory as to date by examination of the records.

218 Ans. to int. 4. He did; R. W. Estlin did examine the records to ascertain if there was any *any* encumbrance upon the lands embraced in the deed of trust then about to be executed to Nugent and Yerger, as trustees, for the benefit of Robert W. Estlin & Co. I knew this, because I assisted him in the examination; of this I am positive. I do not think Mr. Haycraft, the clerk, rendered any assistance; he was in the office at times, I do not think constantly, during the examination. I am confident he did not aid Mr. Estlin or myself in the examination made by us; consequently I think that Mr. Haycraft was mistaken when he said he personally assisted in the examination. During the time this deed of trust was being canvassed and executed I think I was in the office every day, Sunday excepted, and never saw Mr. Haycraft assist Mr. Estlin in the examination, to the best of my recollection.

219 Ans. to int. 5. I would say that the examination made by us was thorough and complete, and that if the Bosley deed of trust was seen—and we must necessarily have discovered it in the course of our examination, it being on different lands, that is, in a different range from the lands to be included in the Estlin deed of trust, and from the further fact that the Bosley deed had been executed a number of years before—I would naturally have presumed that a man of Mr. Montgomery's reputed wealth would have long since paid off the debt due under the Bosley deed of trust; and being satisfied that these were different lands from those included in the Estlin deed, I was misled, I suppose. I now have no recollection of the Bosley deed having been seen in that examination; in fact, after this examination was made I was satisfied in my own mind that there was no lien or incumbrance on the lands conveyed in the Estlin deed. Mr. Estlin seemed to be of the same opinion.

W. R. TRIGG.

Sworn to and subscribed before me this 23rd day of August, A. D. 1871.

WM. H. BOLTON,
U. S. Commr.

220 Ans. to X-int. 1. I was. I had a very small practice at that time.

Ans. to X-int. 2. I was assisting Mr. Haycraft as far as I could without interrupting my business; it was as deputy clerk. He paid me by the month.

Ans. to X-int. 3. I do not think Mr. Haycraft would do anything he thought dishonorable.

Ans. to X-int. 4. As said on my examination-in-chief, I have no recollection of the Bosley deed having been seen by Estlin or myself. I find it, said deed, recorded in book N, pages 266 to 269 inclusive. The date of the deed is July 13th, 1848, the amount of the notes secured $14,000; upon the payment of the sum of $1,120 annually, as required in said trust-deed, then the note was not to mature until the 13th day of July, 1858, but upon a failure to pay the above sum of $1,120, then my recollection is that the note for $14,000 was to become due and payable.

Ans. to X-int. 5. It still appears unsatisfied on the record. I
221 have no recollection of ever having read the Bosley deed of trust until last evening.

Ans. to X-int. 6. 2,360 acres; 87 or 88 slaves.

Ans. to X-int. 7. All the lands included in the Bosley trust-deed as to parts of sections are found in the Estlin deed, but they all differ in the range number, those in the Bosley deed being in range 9 west, those in the Estlin deed being in range 8 west. The Estlin deed has some 700 acres more land.

Ans. to X-int. 8. I think that at that time I might have been mislead by the misdescription. I should then have thought that the Bosley deed was upon different land. I think my inquiry would have been limited to the reading of the deed. I think most probably not. I took the record as being correct; now I might act differently.

Ans. to X-int. 9. At that time I should have concluded that they were different lands, not thinking that so great an error would exist in a business transaction of so much importance; whilst I might have concluded that the lands represented the plantation upon which
222 the slaves were working, I still would not have known that there was any misdescription in the lands, not knowing what lands Mr. Montgomery had owned before that time.

Ans. to X-int. 10. If the substitution had been made as suggested, and some 700 acres of land had been added to the Bosley deed that were included in the Estline deed, then the lands referred to in each deed would have been the same.

Ans. to X-int. 11. I do not know. I have not been paid as an attorney or otherwise to make this examination; have not done so, and cannot answer. I cannot remember the numbers and ranges of land from my examination made with Mr. Estlin in 1866.

Ans. to X-int. 12. I have not time that I would be willing to give to such examination. This information can be ascertained from the proper officer. I think, however, it can be seen by an examination of an exhibit to Mr. Haycraft's deposition.

223 Ans. to X-int. 13. As I stated before, I do not. I do not recollect the Bosley deed in that examination, and consequently cannot say what Mr. Montgomery intended to do. I do not think that it would necessarily have been the opinion of any man at all cautious in business.

Ans. to X-int. 14. My recollection is that it was in the morning of the same day that I, as deputy clerk, took the acknowledgments of A. B. Montgomery and W. L. Nugent and W. G. Yerger to the Estlin deed of trust.

Ans. to X-int. 15. I again state that I do not recollect having seen the Bosley deed; think, however, that I must have seen it in the course of that examination. I do not recollect the conversation between Estlin and myself. I suppose that he wanted to see if the title was perfect.

Do not think that he could have said that he was informed of the existence of the Bosley deed and that it was a lien upon the lands about to be conveyed to him, for if he had I should have formed a different opinion from the one arrived at from that examination.

224 Ans. to X-int. 16. He did—from A. B. Montgomery, W. P. Montgomery, Montgomery and Kirk, and W. and W. P. Montgomery. The debt of W. P. Montgomery as shown by the records was $40,445.63; the number of acres of land, 754, according to my addition; the debt from Montgomery and Kirk was $23,577.46; the number of acres, 2,402; W. and W. P. Montgomery debt, $58,469.09; number of acres, 1,256. I think he did make such examination; in this I do not think I gave him any assistance. I think his examination was prior to the examination made by me.

Ans. to int. 17. I cannot at this time say where I was on the 22 and 23 of May, 1866; am almost certain was in Greenville, however. On 24th May I took the acknowledgment of the several deeds of trust referred to in the town of Greenville.

Ans. to X-int. 18. If I saw the Bosley deed, I think it more than probable that Mr. Montgomery's past wealth, in part, induced me to believe that the lien was satisfied; with the misdescription, however, I should have thought they were different lands than those about

225 to be conveyed to Estlin, not having had any notice of the existence of such supposed lien on the Swiftwater plantation.

Ans. to X-int. 19. As before stated, I have no recollection of the Bosley deed having been seen, nor do I recollect that it was canvassed at the time between Estlin and myself; my conclusion as to the priority of Estlin's lien was from the examination of the records at that time.

Ans. to X-int. 20. I do not know when the misdescription was first ascertained, or by whom. I was surprised when the sale was made by Alex. Yerger, commissioner, having up to that time believed that the Estlin deed was the only lien upon the lands.

Ans. to X-int. 21. I was satisfied from the examination I then made.

Ans. to X-int. 22. Whilst I cannot recollect the conversation, I still think from what was then said by Estlin, that he seemed to be satisfied that there was no other lien upon the land.

Ans. to X-int. 23. They differ in the range number, and there are additional sections or portions of sections in the Estlin deed.

226 Ans. to X-int. 24. I did not know whether he owned them or not, and I did not know that they were in the adverse possession of others when the Bosley deed was executed. I do not know Mr. Estlin's knowledge on these points.

Ans. to X-int. 25. I have no recollection of the Bosley deed, or of its having been canvassed that day.

Ans. to X-int. 26. Trigg and Buckner, as attorneys, have some claims against the estate of A. B. Montgomery, bankrupt, now in the hands of H. F. Cook, esq., attorney. None of these claims, however, are secured by the Estlin deed of trust.

W. R. TRIGG.

Sworn to and subscribed before me this 26th day of August, A. D. 1871.

WM. H. BOLTON,
U. S. Commr.

Filed among the papers in the above cause June 25th, 1872.
G. T. SWANN, *Clk.*

227 Depositions of John H. Nelson, Stevenson Archer, and J. B. M. Lawson, to wit:

Cir. court U. S.

CANAL AND BANKING CO. ET AL.
vs.
A. B. MONTGOMERY ET AL. } In equity.

Interrogatories to be propounded to John H. Nelson, Stevenson Archer, and J. B. M. Lawson, witnesses on behalf of the complainants, residing in the county of Washington, State of Mississippi; the depositions of said witnesses, when taken, to be offered in evidence on behalf of the complainants on the final hearing of the above-entitled cause.

1st. State your name, age, and residence, and state how long you have known the plantation in Washington County, called Swiftwater, formerly the property of A. B. Montgomery.

2nd. State now, as nearly as you can, the present value of this plantation, and state what was the fair value of the place in the years 1868 and 1869.

3rd. You will please state the quantity of open land on the place, the quality of the land, and the description, extent, and value of the buildings on said place.

228 4th. State what is the fair value of the whole plantation at this time.

COOK AND JOHNSTONS,
Solrs. for Complts.

Cross-ints.:

X 1. State whether or not you were present at the sale of the place referred to. If yea, state whether there was any competition in the bidding or not, and to what extent.

X 2. Were there not many plantations sold in Washington County during the years 1868 and 1869, under decrees and executions? What amount did they bring? Did not Swiftwater sell for as much as any other plantation of its value at the time? Was not land sold for a merely nominal sum about that time? What was the prevalent opinion as to the value of land then?

X 3. For what did the Lacoste plantation of W. P. Montgomery sell at forced sale? Is not that place adjoining the Swiftwater place? What is its value compared to Swiftwater? When was it sold, and did not the same causes operate when Swiftwater was sold?

NUGENT AND YERGER, *Solrs.*

229 We waive notice and commission, and agree that the depositions of the above-named witnesses may be taken before any U. S. comm'r, or any officer authorized by the State laws to administer oaths, on the foregoing inter's and the annexed cross-inter's, subject only to objection as to competency and relevancy.

NUGENT AND YERGER,
Sols. for Defdts.

SEPT'R 25TH, 1872.

Cir. court U. S.

CANAL AND BANKING CO. ET AL.
vs.
A. B. MONTGOMERY ET AL. } In equity.

Deposition of J. B. M. LAWSON, who, being duly sworn, deposes and says in answer to ints. and X-ints., as follows, to wit:

1. J. B. M. Lawson; 48 years of age; Washington County, Miss., about five miles from Greenville. Have known it since about 1857.

2. At least $75,000. During these years land sold very low, and a person who had money could have bought land at almost any price. I think very likely, at that time, it could have been bought for $25,000 or $30,000 *dollars.*

230 3. I don't know exactly; some sixteen or eighteen hundred acres. It is a very quality of land, and when well cultivated, before the war, produced very fine crops. It is as fine a body of land as can be found anywhere of the same extent. There is very little waste land.

3. Don't think the buildings, except the dwelling and gin-house, are of much account; both of these are very large. The dwelling is worth at least $10,000.

4. About $75,000.

X-inter's:

X 1. I was not.

X 2. I don't know. I do know that a good many were advertised for sale, and suppose they were sold, but never attended the sales, and don't know what they brought. Don't know what it sold for. I expect it was. I was present once when Col. W. H. Bolton sold several places as assignee in bankruptcy, and they sold for very small sums. I don't know what the prevalent opinion was, but I have heard people say at that time that they could buy any land on Dear Creek, which is as

231 good land as any in the country, at five dollars per acre, and at the same time I knew some lands to sell quite high.

X 3. I don't know. It adjoins the Swiftwater place. Swiftwater is much the finest place; worth two of it, I expect. I don't know exactly when it was sold; think it was either in 1868 or 1869. I don't know anything about the causes.

J. B. M. LAWSON.

Sworn to and subscribed before me this 22nd day of October, 1872.

S. W. FERGUSON, *Com'r.*

STATE OF MISSISSIPPI,
Washington County:

I hereby certify that the foregoing deposition was taken by me in my office, in the town of Greenville, Miss., on the 22nd day of October, A. D. 1872, and is wholly in my own handwriting; that the deponent was first duly sworn, and that he signed said deposition in my presence.

Witness my hand and seal this 22nd day of October, 1872.

S. W. FERGUSON, [SEAL.]
Com'r Chancery Court, Washington County.

232 Cir. court U. S.

CANAL AND BANKING CO. ET AL. *vs.* A. B. MONTGOMERY ET AL. } In equity.

Deposition of JOHN H. NELSON, who, being duly sworn, deposes and says in answer to interrogatories and cross-interrogatories, as follows, to wit:

Interrogatories.

1. My name is John Nelson; age, 35 years; residence, Greenville,

Washington County, Miss.; have known the Swiftwater plantation since 1858.

2. About forty dollars per acre; don't know the number of acres it contains; don't know what the fair value of the place was in 1868 and 1869.

3. Know nothing of the quantity of open land on the place; from hearsay only know the quality of the land to be sandy; the value of the residence to be about ten thousand dollars ($10,000;) don't know what other buildings are on the place.

4. This I have answered in my answer to int. No. 2.

Cross-interrogatories.

233 X 1. Do not remember being present at the sale referred to, and know nothing whatever of the bidding.

X 2. I believe there were several plantations in the county sold during the year 1868 and 1869, under decrees and executions; the amounts bid for them were merely nominal in my opinion; don't know what Swiftwater sold for; the prevalent opinion in 1868 and 1869 was that lands in future would enhance in value.

X 3. I do not remember the amount for which Lacost' plantation sold; know that it sold very low; a mere nominal price; that place adjoins Swiftwater plantation and is superior in quality of land to Swiftwater; being without any data to refresh my memory, I cannot say in what year it was sold, but believe it to have been in 1868 or 1869; cannot say in what year Swiftwater was sold for same reason.

JOHN H. NELSON.

Sworn to and subscribed before me this 16th day of October, A. D. 1872.

S. W. FERGUSON, *Com'r.*

234 STATE OF MISSISSIPPI,
Washington County:

I hereby certify that the foregoing deposition of John H. Nelson was taken by me in my office, in the town of Greenville, Miss., on the 16th day of October, A. D. 1872, and is wholly in my own handwriting; that the deponent was by me first duly sworn, and that he signed said deposition in my presence.

Witness my hand and seal this 16th day of October, A. D. 1872.

S. W. FERGUSON, [SEAL]
Com'r Chancery Court, Washington County, Miss.

Cir. court U. S.

CANAL AND BANKING CO. ET AL.
vs.
A. B. MONTGOMERY ET AL. } In equity.

Deposition of STEVENSON ARCHER, who, being by me first duly sworn, deposes and says, in answer to interrogatories and cross-interrogatories, as follows, to wit:

Interrogatories.

235 1. Stevenson Archer; 34 years of age; Greenville, Washington County, Miss.; since 1857.

2. About $35,000; in the beginning of 1868 the place was worth from $15,000 to $20,000, according to ruling rates; in 1869, from $45,000 to $50,000.

3. There are fifteen hundred acres of cleared land; most of the land is black buckshot soil; the dwelling-house is worth six or eight thousand dollars; the gin-house, I suppose, $4,000; the quarters and stables are in bad repair, and I can't estimate their value.

4. About $35,000.

Cross-interrogatories.

X 1. I was not present, and know nothing about the bidding.

X 2. The Deerfield plantation, three miles from the Swiftwater plantation, was sold during these years; I don't know of any others; the Deerfield tract, of about seven hundred acres, brought sixteen hundred dollars; I think that Swiftwater sold for as much as any other; land was sold for a merely nominal sum in 1868; in 1868 the prevailing opinion was that land was worth very little; in 1869, it appreciated
236 in value.

X 3. I don't remember the exact amount, but it was low. It adjoins the Swiftwater; it is neither worth as much per acre nor does it contain as many acres. I don't remember the date of sale. My impression is that the same causes operated when Swiftwater was sold.

STEVENSON ARCHER.

Sworn to and subscribed before me this 15th day of October, A. D. 1872.

S. W. FERGUSON, *Com'r.*

STATE OF MISSISSIPPI, *Washington County:*

I hereby certify that the foregoing deposition was taken by me in my office in the town of Greenville, Miss., on the 16th day of October, A. D. 1872, and is wholly in my own handwriting; that the deponent was duly sworn and that he signed said deposition in my presence.

Witness my hand and seal this 16th day of October, A. D. 1872.

S. W. FERGUSON, [SEAL.]
Com'r Chancery Court, Washington County, Missi.

237 DEFENDANT'S TESTIMONY.

Deposition of James R. Yerger.

UNITED STATES OF AMERICA,
Southern District of Mississippi:

The President of the United States to James D. Stewart, esq, greeting:

Know ye that, confiding in your prudence and fidelity, we hereby authorize and empower you by these presents to examine William Yerger and James R. Yerger on their corporal oaths, as witnesses in a cause depending in the circuit court of the United States for the southern district of Mississippi, in equity, wherein the New Orleans Canal and Banking Company, et al. are complainants and A. B. Montgomery et al. are defendants, on behalf of the complainants, on the annexed interrogatories; and therefore you are commanded, at a certain time and place to be appointed by you, you do cause the said witnesses to come before

you, and then and there examine them on oath on said interrogatories, and that you take such examination and reduce the same int'
238 writing and return the same annexed to this writ, closed up under your seals, into the said circuit court before the judges thereof with all convenient speed.

Witness the Hon. Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, and seal of said circuit court, at office in Jackson, in said district, this 28th day of May, A. D. 1872.

[L. S.] GEO. T. SWANN, *Clerk.*

Circuit court of the United States, southern district of Mississippi, ss:

N. O. CANAL AND BANKING CO. *vs.* A. B. MONTGOMERY ET AL. } In equity. No., N. S., 99.

Interrogatories to be propounded to William and James R. Yerger, witnesses on behalf of the *complainants* in the above cause.

Interr'y 1st. State what you know with reference to the sale of the Swiftwater plantation in this suit by Alexander Yerger, proceeding under the decree of the U. S. court referred to in this cause. State who purchased said property at said sale, who was present, and
239 the circumstances under which the same was made.

Interr'y 2d. State the circumstances of the sale of the said property by *A. B.* Boxley to the defendant Victor Montgomery in this suit. State also after the sale by the said trustee who took possession of said land, and the circumstances attending the possession of the same.

Interr'y 3rd. State what was the marketable value of lands at the time of said sale, and any other circumstances you know material to either party in this suit.

W. AND J. R. YERGER,
Sol. for Defendants.

A true copy. Teste.

[L. S.] GEO. T. SWANN, *Clerk.*

Circuit court of the United States, southern district of Mississippi:

N. O. CANAL AND BANKING CO. *vs.* A. B. MONTGOMERY & AL. } In equity. No., N. S., 99.

Be it remembered that on the day of June, A. D. 1872, I, James D. Stewart, commissioner, &c., of the United States, under and by virtue of the annexed commission did cause JAMES R. YERGER, a wit-
240 ness on behalf of the defendants in the foregoing cause, for examination on the annexed interrogatories, and said witness having been by me first duly sworn according to law to testify the truth, the whole truth, and nothing but the truth answering said interrogatories did depose and testify as follows, to wit:

In answer to interrogatory 1st, witness J. R. Yerger answers: Charles Bosley had a deed of trust on the Swiftwater plantation of A. B. Montgomery, the property in dispute in this cause, given to secure the payment of a note due by Montgomery to Bosley. Overton, the trustee, failed or refused to act as trustee in making the sale, and the note and deed of trust were sent by Mr. Bosley to my firm, W. and J. R. Yerger, composed of myself and Judge W. Yerger, now deceased, for suit.

Montgomery was unable to pay the note, and we sued and recovered judgment at law on the note. We also brought suit in the equity side of the United States circuit court, to have a new trustee appointed and sale made of the land. We obtained a decree for the appointment
241 of new trustee, had Alexander Yerger substituted as trustee, and on the 15th of November, 1867, modified the terms of the decree to that of a sale for half cash and half on time, at twelve months. The property was regularly advertised, and I left Jackson to attend the sale at Greenville on the day fixed for the same, which was February 8th, 1868. Mr. Bosley had directed us in January, 1868, to make no postponement of the sale, but to sell it as soon as possible, and to bid for the land ten thousand dollars for him, Mr. Bosley. I visited Greenville and attended the sale, and bid the land in at $7,500.00 for Mr. Bosley. The property had improvements on it. Mr. A. B. Montgomery was living on the place with his family. Lands were renting at that time in Washington County at a very low price; it was then late in the season of the year, when lands could be to advantage put upon the market for rent, and in my judgment it was for the interest of Mr. Bosley to leave Mr. Montgomery in possession of the property as his (Bosley's)
242 tenant; accordingly, after the sale, I prepared an acknowledgement in which Mr. Montgomery yielded possession and acknowledged himself as Bosley's tenant at will. I append that paper, marked "Exhibit 1," to this deposition. Mr. A. B. Montgomery was present at the sale. He was very anxious to get me to bid higher for the property, but I declined to do so. A deed was made by Alexander Yerger to Mr. Bosley, said lands being the lands in dispute herein.

Answer to interr'y 2, witness said: After the sale we advised Mr. Bosley that we had bought in the land for him, and a short while after that we wrote him that a party from Virginia wanted to buy, and offered $15,000 for it. Afterward, Nugent and Yerger, of Greenville wrote us in behalf of Mr. Victor Montgomery, desiring to buy the land from Mr. Bosley; and after a considerable time Mr. Bosley sold to Mr. Victor Montgomery, and his sister and brother, but I do not know upon what terms. I know that Mr. Bosley was very reluctant to part with the land after he had got the possession of it. Mr. Bosley took pos-
243 session of the land as shown in Exhibit A, Mr. A. B. Montgomery being left in possession of the property by me, as I believed he would take care of the property properly until Mr. Bosley could make a sale of it.

Interr'y 3rd. Witness says: I know nothing else material to either party in this suit.

And further this deponent saith not.

JAMES R. YERGER.

And I do further certify that said deposition was reduced to writing in my presence, and signed by said witness, James R. Yerger, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

JAMES D. STEWART, [SEAL.]
United States Commissioner, &c.

Exhibit 1, or A, to foregoing deposition of James R. Yerger, to wit:

GREENVILLE, *Febr'y 8th*, 1868.

Mr. Charles Bosley having purchased, under a decree rendered in the U. S. C. C. at Jackson, Mississippi, all the lands mentioned in said decree

and set forth and referred to therein, this being the decree in the
244 case, No. 15, in equity, of said Charles Bosley vs. A. B. Montgomery.

And whereas the said A. B. Montgomery has yielded up and surrendered on this day to Alexander Yerger, trustee in said decree, all of said lands in order that the sale may be made thereunder.

At the request of said Bosley, and for the purpose of preserving the property and protecting the same, the said Montgomery acknowledges that he has this day entered upon and taken possession of all of said lands as the tenant of said Bosley, and so holds the same at the will of said Bosley, unless some other permanent arrangement is made between the parties.

A. B. MONTGOMERY.

First deposition of Wm. L. Nugent, taken January 31st, 1870, to wit

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Be it remembered that on this 31st day of January, in the year 1870, I, John Fawn, a commissioner appointed under the laws of the
245 United States to take affidavits and acknowledgments of bail, &c., caused to come before me at Greenville, Miss., to be examined as a witness de bene esse, WILLIAM L. NUGENT, a witness in behalf of the defendants in a suit pending at Jackson, in the court of the United States, for the southern district of Mississippi, wherein Pike, Lapeyre and Bro. et al. are plaintiffs and A. B. Montgomery et al. are defendants, and the said examination was taken by me de bene esse because the said William L. Nugent, the witness, resided at Greenville, Missi., more than one hundred miles from Jackson, the place where the court in which said suit is pending and to be tried is appointed by law to be held; and no notification was given to the adverse party of the time and place appointed for taking said deposition, to be present at the taking of the same, and to put interrogatories, if he saw fit, because the said plaintiffs were not within one hundred miles of the place of taking said deposition, and had no agent or attorney within one hundred
246 miles of said place of caption to whom such notification could be given; and I therefore proceeded with said examination, and the said William L. Nugent, the witness, being carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

I have examined carefully the map of the Tennessee property attached as Exhibit 3 to answer and cross-bill of defendants, and the notes on it. The map was made by myself from the recorded plat on file in the chancery court at Nashville, and the annotations contain in brief the present attitude of the property. On the 22nd May, 1866, when Mr. Estlin came up to arrange his debts with A. B. Montgomery, his accounts, as stated, showed a cash balance due him of $28,064.76, and the acceptances and endorsements outstanding in the hands of creditors of his $90,312.79. He then proposed to the Montgomery family to give them five years on the whole debt if they would give him mortgages, would abate all interest past due, and take new notes at five
247 years with the interest stated in the mortgages, six per cent. The reasons for giving the mortgages were that the debt was carried forward for five years, the past interest was abated, and the running interest at six per cent. At the date of the transaction it was

not pretended that he had paid the outstanding bills and notes in the hands of third parties, but he said he could retire the paper with new paper secured by a mortgage. I do not recollect that in the conversations between Mr. Estlin and A. B. Montgomery any questions were asked as to prior encumbrances, but on the day after the A. B. Montgomery mortgage was executed, Montgomery and Kirk gave theirs, and during the conversation between them and Mr. Estlin, Kirk said there was a lien on that part of section 16 included in the lands mortgaged. This brought out from A. B. Montgomery the remark that there was a prior mortgage on Swiftwater in favor of Bosley; and when Mr. Estlin asked its extent, Montgomery replied about $22,000, Mr. Estlin answered that this was a mere bagatelle, as he would pay that
248 much out of the crop of 1866, and the crops of 1867 and 1868 would be left to pay the first instalment of his mortgage debt. This is my recollection of the transaction; certainly I do not remember to have heard A. B. Montgomery assure Estlin that there were no prior encumbrances. I well remember that in the conversations that occurred as to the value of Swiftwater plantation, it was stated that the place was worth before the war about $200,000.00, and it would then be worth almost as much.

Mr. Bosley had two separate claims against A. B. Montgomery, secured by two separate mortgages—one on Swiftwater plantation, in Washington County, Mississippi, and the other on the Nashville property. These two liens were never consolidated. The deed from to J. M. Montgomery was given to secure a debt due me of some $5,000, and a debt due David Freshwater of some 10 to 15,000. Mr. Montgomery disliked to give the mortgage on the Nashville property, which we asked him for, as he said it would prevent his selling the
249 property. I then proposed the deed, and stated we would give him a written agreement that he might make a deed to his nephew, and sell off property enough to pay us. This done, we would have the lands reconveyed. The agreement was written, signed by J. N. Montgomery, and delivered to him. J. N. Montgomery held simply as a trustee to secure our debts and nothing more. There was no understanding or agreement between him and Bosley of any character. Bosley looked to the Nashville property for the Nashville debt. He had an attachment lien also on it for the Mississippi debt also; but he never at any time agreed that his whole debt should be consolidated and rest on the Nashville property; nor did he ever agree to release A. B. Montgomery from the debt and look to his nephew. Bosley's bill in the U. S. court was filed to secure his debt, and not with any fraudulent intent that I ever heard of. He had Swiftwater sold and bought it in himself. Some time afterwards I endeavored to buy the place from him for the sons of A. B. Montgomery, and made a good many propositions,
250 all of which were rejected. I went to Nashville with Victor Montgomery and called fruitlessly upon Bosley two or three times. I urged him to sell to the young men, pressing upon him the ties of former friendship between him and A. B. Montgomery, and the fact that the whole family would be beggared if he did not sell to the boys. He was deaf to all my entreaties, curtly replying he had Swiftwater plantation, and intended to hold it. He had ridden over the place before he took the mortgage, &c., and A. B. Montgomery did not pay his debts, &c. At last I proposed to give him $15,000 for the place if he would sell to the boys, and he agreed to do so. Three thousand dollars of this amount I raised myself for them in New Orleans. Some they got from their mother, and the balance was loaned them by Robert Allison, of Missouri,

an old and intimate friend of the family. In raising the money from Allison, I agreed for the young men that they should give him a mortgage. Bosley insisted on closing the trade in Nashville, and to carry out the agreement it was necessary that the title should be made
251 direct to Victor with power to execute the mortgage, as his sister was a minor, and his brother in Texas or Mississippi. Bosley was induced to sell Swiftwater by the persuasions of his counsel, and because he got a full price for it at that time; at least, so I judge, and I was familiar with the whole affair. Victor Montgomery paid the actual cash to Bosley, and the money was not obtained on the credit of his father. After Bosley sold the place under the deed of trust, and prior to the purchase from him, the place was leased to Victor and Wm. Montgomery, sons of A. B. Montgomery, from him. In fact, I secured the possession for them from Bosley, as the parties had attorned as tenants at sufferance before that. I have lived in Washington County since 1852, and am familiar with the records. Swiftwater plantation was the only one owned by A. B. Montgomery, in township 17, when I came here. He has never owned any in township 17, range 9. Every one thought, when the sale occurred, that Swiftwater plantation was being sold by the commissioner.

WM. L. NUGENT.

252 And I do further certify that the preceding deposition was reduced to writing by and signed by the said William L. Nugent, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

The deposition was reduced to writing by witness, in my presence and signed by him.

Sworn to and subscribed before me this 31st day of January, 1870.

JNO. FAWN,
U. S. Comr. for the Southern Dist. of Miss.

Second deposition of W. L. Nugent, taken 19th May 1870, to wit:

UNITED STATES, OF AMERICA,
Southern District of Mississippi:

Be it remembered that on this 19th day of May, in the year 1870, I, John Fawn, a commissioner appointed under the laws of the United States to take affidavits and acknowledgements of bail, &c.,
253 caused to come before me at Greenville in said district, to be examined as a witness de bene esse, WILLIAM L. NUGENT, a witness on behalf of the defendants in a suit pending at Jackson in said district, in the circuit court of the United States for said district, equity, N. S., 99, wherein New Orleans Canal and Banking Co. et al. are plaintiffs and A. B. Montgomery et al. are defendants, and the said examination was taken by me de bene esse because the said Nugent, the witness, resided at Greenville, Miss., more than one hundred miles from Jackson, Miss., the place where the court in which said suit is pending and to be tried is appointed by law to be held; and no notification was given to N. O. Canal and Banking Co. et als., the adverse party, of the time and place for taking said deposition, to be present at the taking of the same, and to put interrogatories, if *he* saw fit, because the said complainants were not within one hundred miles of the place of taking said deposition, and had no agent or attorney within one hundred miles of said place of caption to whom such notification could be given, and I there-

254 fore proceeded with said examination, and the said Nugent, the witness, being carefully examined and cautioned and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

I have examined carefully the map of the Tenneesee property attached as Exhibit 3, to answer and cross-bill of defendants and the notes on it. The map was made by myself from the recorded plat on file in the chancery court at Nashville, and the annotations contain in brief the present attitude of the property. On the 22d May, 1866, when Mr. Estlin came up to arrange his debts with A. B. Montgomery, his account, as stated, showed a cash balance due him of $28,064.76, and the acceptances and endorsements outstanding in the hands of his creditors to be $90,312.79. To induce the execution of the mortgage he proposed to Mr. Montgomery to abate all interest and give five years time, taking new notes at six instead of eight per cent., which the acceptances bore. At the date of the transaction, Mr. Estlin did not pretend
255 that he had taken up the outstanding bills in the hands of third parties, but said with new notes secured by mortgage he could take up the old paper. I do not recollect that in the conversation between Mr. Estlin and Mr. Montgomery any questions were asked about prior encumbrances, but on the day after Montgomery's individual arrangement was made, he and Mr. Kirk gave a mortgage of like tenor, and during the conversation between the parties Kirk spoke of liens being on part of his land, and this brought from Mr. A. B. Montgomery the statement that there was an old mortgage on Swiftwater plantation in favor of Charles Bosley, of Nashville, Tennessee. Estlin at once asked its extent, and Montgomery replied about $22,000. Mr. Estlin answered that this was a mere bagatelle, as he would pay this out of the crop of 1866, and have the crops of 1867 and 1868 to meet the instalment of the Estlin debt; this in relation to the provision in the trust-deed requiring six months' notice in case of sale by the trustees. My recollection is
256 distinct on this point. Immediately after ascertaining the existence of this mortgage Mr. Estlin spoke of Swiftwater as being worth about $200,000. Mr. Bosley held two mortgages against Montgomery for two distinct debts; one on the Nashville property and the other on Swiftwater plantation. These two mortgages were never consolidated. The deed from Mr. M. conveying the Nashville property to J. M. Montgomery was intended as a mortgage to secure a debt due me of $5,000 and one due Freshwater, his old overseer, of some $15,000. Mr. M. objected to giving any more mortgages, as he wanted to sell the Nashville property to pay debts, and we agreed that J. M. M. should dispose of so much of it as was necessary to pay our debt and the other prior liens, and reconvey the balance. Mr. M. held a written agreement of this sort from his nephew. The deed was given simply to secure our debts. There was no understanding between the parties and Bosley of any kind. Bosley looked to the Nashville property for the Nashville debt. He had an attachment lien on it for the Mississsippi debt;
257 but he never at any time agreed that the two debts should be consolidated and rest on the Nashville property; nor did he ever agree to release A. M. Montgomery from the debt and look to his nephew. Bosley's bill was filed in the U. S. court, to secure his debt; he had Swiftwater plantation sold, and bought it in himself. The trustee took possession of Swiftwater plantation, and was in possession of it when he sold. Every one on the day of sale knew what was being sold, and not for some time afterwards did I ascertain the mistake in the description of the lands embraced in the plantation. Some time after

the sale I made several overtures to Mr. Bosley to buy the place for the sons of A. B. Montgomery, but was unsuc'essfull. I went to Nashville with Victor Montgomery for the same purpose, and urged Bosley to sell the plantation, pressing the ties of former friendship, and the fact that the whole family would be beggared if he did not sell. He was deaf to all my entreaties, curtly replying that he had Swiftwater, and intended to keep it. Said he had ridden all over Swiftwater before he took the mortgage, &c. Said A. B. M. did not pay his debts. At last I
258 proposed to give him $15,000 cash for the place, and he agreed to take it, at the request of his agent and lawyers. Of this amount I raised, in New Orleans, for the sons and daughter of A. B. Montgomery, on my own note, $3,000; about $2,000 they borrowed from their mother; and $10,000 from Robert Allison, of Mo., an old and intimate friend of the family. In raising the money from Allison, I agreed to give him a mortgage on Swiftwater. Bosley wanted the money paid to him in Nashville, and to carry out the agreement it was necessary to make title direct to Victor with power to execute the mortgage, as his sister was a minor, and his brother in Texas or Missi. Bosley got a full price for Swiftwater at the time he sold; so I thought, and I was familiar with the value of lands in Washington Co. at the time. Victor Montgomery paid the actual cash to Mr. Bosley, and the money was not obtained on the credit of his father.

After Bosley sold Swiftwater under his trust-deed, and prior to the purchase from him, the place was rented from him by Victor and
259 Wm. F. Montgomery. In fact, I effected the lease for them, as before they had attorned as tenants at sufferance. I have lived in Washington County since Septr., 1852, have practiced law most of the time, and am familiar with the records, maps, &c. Swiftwater plantation was the only one owned by A. B. Montgomery in township 17, when I came here. He has never owned any in township 17, range 9 west. Had Mr. Estlin examined the records he would have found the mortgage in favor of Charles Bosley, and had he compared it with his own he would have found that the only variance as to description of land between the two consisted in the range No. Had he gone further he would have discovered that A. B. Montgomery never did own the lands as described in the Bosley trust-deed, but that by putting the range correctly, Swiftwater plantation would be exactly described. Had he gone further he would have found that the lands as described by range in the Bosley trust-deed in part had no existence whatever, and as to those parts of sections that did appear in the map on file, they
260 had been in the actual adverse possession of other parties for twenty or thirty years. Mr. Estlin was informed before his mortgage was concluded or recorded of the Bosley trust-deed on Swiftwater. I had prepared and handed to complainants' solicitors ints. to be crossed by them with a view to establish the facts last above stated, but tho' often promised, and tho' I have been waiting for months, I have never succeeded in taking depositions to prove said facts for want of ints. A map of the township 17, R. 8, and township 17, R. 9 W., filed with answer and cross-bill was withdrawn from the files to be proven. This map is correct, and exhibits the facts as they exist of record here. It is in possession of complainants' solicitors.

W. L. NUGENT.

And I do further certify that the preceding deposition was reduced to writing by the witness in my presence, and signed by him, and that

I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

JNO. FAWN,
U. S. Comr.

261 First deposition of A. B. Montgomery, taken 31st January, 1870, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Be it remembered that, on this thirty-first day of January, in the year 1870, I, John Fawn, a commissioner appointed under the laws of the United States to take affidavits and acknowledgments of bail, &c., caused to come before me at Greenville, Miss., to be examined as a witness de bene esse, A. B. MONTGOMERY, a witness in behalf of the defendants in a suit pending at Jackson, in the court of the United States for the southern district of Mississippi, wherein Pike Lapeyre and Bro. et al. are plaintiffs and A. B. Montgomery et al. are defendants, and the said examination was taken by me de bene esse because the said A. B. Montgomery, the witness, resided at Greenville, Miss., more than one hundred miles from Jackson, the place where the court in which said suit is pending and to be tried is appointed by law to be held; and no notification was given to the adverse party of the time
262 and place appointed for taking said deposition to be present at the taking of the same, and to put interrogatories, if he saw fit, because the said plaintiffs were not within one hundred miles of the place of taking said deposition, and had no agent or attorney within one hundred miles of said place of caption to whom such notification could be given; and I therefore proceeded with said examination, and the said A. B. Montgomery, the witness, being carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

On the 21st or 22nd of May, 1866, Mr. R. W. Estlin, accompanied by W. L. Nugent, came to my residence near Greenville to arrange a debt I owed said Estlin's firm. During the conversation which ensued Mr. Estlin remarked that Mr. Bosley said I owed him a large debt. I replied that Mr. Bosley's debt was not very large, and that it was amply secured by a mortgage on my Swiftwater plantation. Mr. Estlin then asked me what was the amount of Bosley's debt. I informed
263 him that it was $15,000 or $16,000, with interest at 10% per annum since the commencement of the late war. Mr. Estlin thereupon remarked that it was a mere trifle, for I would clear sixty thousand dollars that year. This conversation occurred before I executed the mortgage on Swiftwater and other realty in favor of said Estlin and firm.

On the following day, while in Greenville for the purpose of acknowledging the above-mentioned mortgage, and to execute one in conjunction with Mr. A. M. Kirk, to the said Estlin, I again informed Mr. Estlin of Mr. Bosley's prior mortgage on Swiftwater, stating that I thought the debt, together with the interest, would amount to some twenty odd thousand dollars. Mr. Estlin replied, "that is a mere bagatelle." This conversation took place in Nugent and Yerger's law-office, and in W. L. Nugent's presence.

A. B. MONTGOMERY.

And I do further certify that the preceding deposition was reduced

to writing by Victor Montgomery, and signed by the said A. B. Montgomery in my presence, and that I am not of counsel or attorney
264 for either of the parties to said suit, nor am I interested in the event thereof.

Sworn and subscribed to before me this 31st day of January, A. D. 1870.

JNO. FAWN,
U. S. Comr. for the Southern Dist. of Miss'i.

Second deposition of A. B. Montgomery, taken 19th May, 1870, to wit:

UNITED STATES OF AMERICA,
Southern District of Mississippi :

Be it remembered that, on this 19th day of May, in the year 1870, I, Jno. Fawn, a commissioner appointed under the laws of the United States to affidavits and acknowledgments of bail, &c., caused to come before me at Greenville in said district to be examined as a witness de bene esse, A. B. MONTGOMERY, a witness in behalf of the defendants in a suit pending at Jackson in said district in the circuit court of the United States for said district, equity, N. S., 99, wherein
265 New Orleans Canal and Banking Co. et al. are plaintiffs, and A. B. Montgomery & Co. are defendants, and the said examination was taken by me, de bene esse because the said A. B. Montgomery, the witness, resided near Greenville, Miss., more than one hundred miles from Jackson, Miss'i, the place where the court in which said suit is pending and to be tried is appointed by law to be held; and no notification was given to N. O. Canal and Banking Co. et al., the adverse party, of the time and place appointed for taking said deposition, to be present at the taking of the same, and to put interrogatories if he saw fit; because the said complainants were not within one hundred miles of the place of taking said deposition, and had no agent or attorney within one hundred miles of said place of caption to whom such notification could be given; and I therefore proceeded with said examination, and the said A. B. Montgomery, the witness, being carefully examined and cautioned, and duly sworn to testify the truth, the
266 whole truth, and nothing but the truth, deposes and says:

On the 21st or 22nd of May, 1866, Mr. R. W. Estlin, accompanied by W. L. Nugent, came to my residence near Greenville to arrange a debt I owed said Estlin's firm. During the conversation which ensued Mr. Estlin remarked that Mr. Bosley said I owed him a large debt. I replied that Mr. Bosley's debt was not very large, and was amply secured by a mortgage on my Swiftwater plantation. Mr. Estlin then asked me what was the amount of Bosley's debt. I informed him that it was $15,000 or $16,000, with interest at 10 % per annum, since the commencement of the late war. Mr. Estlin thereupon remarked that it was a mere trifle, for I would clear sixty thousand dollars that year. This conversation occurred before I executed the mortgage on Swiftwater plantation and other realty in favor of said Estlin and firm.

On the following day, while in Greenville for the purpose of acknowledging the above mentioned mortgage, and to execute one in con-
267 junction with Mr. A. M. Kirk, to the said Estlin, I again informed Mr. Estlin of Mr. Bosley's prior mortgage on Swiftwater, stating that I thought the debt, together with the interest, would amount to

some twenty odd thousand dollars. Mr. Estlin replied, "That is a mere bagatelle."

This conversation took place in Nugent and Yerger's law office, and in W. L. Nugent's presence. Mr. Bosley was a very wealthy capitalist in Tennessee, accustomed to loan money for the annual interest it would bring him. His loan to me would not have been called for had I *have* paid the interest regularly, as Mr. Bosley considered it amply secured. The debt, by the terms of the trust-deed, was not due until the 13th day of July, A. D. 1858. Mr. Bosley had two mortgages to secure two distinct debts—one on the Nashville property, recorded in Davidson County, Tennessee, and the other on the Swiftwater plantation, recorded in Washington County, Missi.

I had nothing to do with the purchase of Swiftwater from Mr.
268 Bosley, nor was it bought with my means or my credit. I have now no interest in the property, and have claimed none since the sale made thereof at Mr. Bosley's instance through the United States court. When I gave the Mississippi mortgage to Mr. Bosley, it was contemplated and intended that Swiftwater plantation should be conveyed. I had no other real estate in township seventeen. The mistake in writing the range number was purely accidental—the unintentional error of the draughtsman.

A. B. MONTGOMERY.

And I do further certify that the preceding deposition was reduced to writing by me, and signed by the said A. B. Montgomery, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

JNO. FAWN,
U. S. Commr.

269 *Deposition of N. J. W. Wortham.*

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Be it remembered that, on this 26th day of December, in the year 1870, I, John Fawn, a commissioner appointed under the laws of the United States to take affidavits and acknowledgments of bail, &c., caused to come before me, at Greenville, in said district, to be examined as a witness de bene esse, A. J. W. WORTHAM, a witness in behalf of the defendants in a suit pending at Jackson, Miss., in the circuit court of the United States for the said southern district of Mississippi, wherein Pike, Lapeyre and Brother and others are plaintiffs, and A. B. Montgomery and others are defendants; and the said examination was taken by me, de bene esse, because the said A. J. W. Wortham, the witness, resided at Greenville, more than one hundred miles from Jackson, the place where the court in which said suit is pending, and to be tried, is appointed by law to be held, and no notification was given to the
270 adverse party of the time and place appointed for taking the said deposition to be present at the taking of the same, and to put interrogatories, if he saw fit, because the said complainants was not within one hundred miles of the place of taking said deposition, and had no agent or attorney within one hundred miles of said place of caption to whom such notification could be given; and I therefore proceeded with said examination, and the said A. J. W. Wortham, the witness, being carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

During the early part of the spring of A. D. 1868, I borrowed of Mrs. Davidella Montgomery three thousand dollars. In May or June of 1868, by Mrs. Montgomery's directions, I sent one thousand dollars to Victor Montgomery, at Nashville, Tennessee, to aid him in purchasing the "Swiftwater plantation," in Washington County, and State of Mississippi, from Mr. Charles Bosley, of Nashville. I was intimately acquainted with A. B. Montgomery, during the year 1868, and
271 know that he had no means, and that no part of the above-mentioned three thousand dollars were his, nor had it ever been his, nor was any portion of the purchase-money paid to Bosley by Victor Montgomery, obtained on the credit of A. B. Montgomery. I am familiar with the whole matter of the purchase from Bosley, and know that it was made by Victor Montgomery for himself, and his brother and sister, as an independent purchase, towards which his father advanced nothing and did nothing.

N. J. W. WORTHAM.

And I do further certify, that the preceeding deposition was reduced to writing by me, and signed by the said N. J. W. Wortham, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

JNO. FAWN,
Commissioner, &c.

272 *Deposition of Robert Allison.*

UNITED STATES OF AMERICA,
Southern District of Mississippi:

Be it remembered, that on this 24th day of December, in the year 1870, I, Jno. Fawn, a commissioner appointed under the laws of the United States to take affidavits and acknowledgments of bail, &c., caused to come before me at Greenville, in said district, to be examined as a witness de bene esse, ROBERT ALLISON, a witness in behalf of the defendants, in a suit pending at Jackson, in the circuit court of the United States for the said district of Mississippi, wherein Pike, Lapeyre and Brother, and others are plaintiffs, and A. B. Montgomery and others are defendants; and the said examination was taken by me, de bene esse because the said Robert Allison, the witness, resided at Louisiana, Missouri, more than one hundred miles from Jackson, the place where the court in which said suit is pending and to be tried is appointed by law to be held; and no notification was given to the
273 adverse party of the time and place appointed for taking said deposition, to be present at the taking of the same, and to put interrogatories if he saw fit, because the said complainants were not within one hundred miles of the place of taking said deposition, and had no agent or attorney within one hundred miles of said place of caption to whom such notification could be given; and I therefore proceeded with said examination, and the said Robert Allison, the witness, being carefully examined and cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

In the spring of 1868 I received a letter from Mr. A. B. Montgomery, inquiring if I had money to put out on interest. Stated that his children wished money to buy them a home. I replied to his letter, that I had some ten thousand dollars in county bonds, and if I could turn them into money I would lend them, the children, the proceeds. In June,

1868, Mrs. Davidella Montgomery came to my house, from Boston, Massachusetts, bringing with her one thousand dollars, which she
274 said she had received from the estate of her sister, Sallie Flournoy, at Lexington, Kentucky. During the latter part of the month, I went to Nashville, Tennessee, taking with me ten thousand dollars of my own money, and the one thousand dollars of Mrs. Montgomery, she requesting me to give it to her son and take his receipt for the same, which I did. I also gave him my ten thousand dollars and took his note drawing ten per cent. interest. I loaned my money to Victor Montgomery, to enable him and his brother and sister to purchase the "Swiftwater plantation," in Washington County and State of Mississippi, of Mr. Charles Bosley. I went with Victor Montgomery and Horace Scales, Bosley's agent, to the Fourth (4th) National Bank of Nashville, and saw Victor pay Scales fifteen thousand dollars in cash, ($15,000.) Scales delivering to him Basley's deed to "Swiftwater." I did not lend the money to A. B. Montgomery, nor on his faith or credit, because I knew he was hopelessly involved, and a bankrupt at
275 that time in fact. I loaned the money to the son of A. B. Montgomery, viz., Victor Montgomery, as above stated, and took his note for the same, secured by mortgage on "Swiftwater," believing that the security, after he had paid the additional five thousand dollars to Bosley, was ample for the money I loaned him; the interest agreed to be paid would, I thought, amply compensate me for the loan.

ROBERT ALLISON.

And I do further certify that the preceding deposition was reduced to writing by me, and signed by the said Robert Allison, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

JNO. FAWN,
Commissioner, &c.

276 *Deposition of W. A. Haycraft.*

UFITED STATES OF AMERICA,
Southern District of Mississippi:

Be it remembered that on this 21st day of August, A. D, 1871, I, W. R. Trigg, a commissioner appointed under the laws of the United States to take affidavits and acknowledgments of bail, &c., by consent of counsel for both parties, caused to come before me at Greenville, Mississippi, to be examined as a witness, WILLIAM A. HAYCRAFT, a witness in behalf of the defendants, in a suit pending in the circuit court of the United States for the southern district at Jackson, Mississippi, wherein New Orleans Canal and Banking Company et al. are plaintiffs and A. B. Montgomery et al. are defendants; and the said W. A. Haycraft, having been by me carefully examined, cautioned, and duly sworn to testify the truth, the whole truth, and nothing but the truth, deposes and says:

I was clerk of the circuit and probate courts of Washington
277 County, State of Mississippi, from January, 1859, to January, 1867. Have resided in said county constantly since the fall of 1846.

In May, 1866, when the deed of trust from A. B. Montgomery to R. W. Estlin & Co. was executed, Mr. Estlin brought it to me to certify what other incumbrances, if any, there were on the land mentioned in it. He was in my office frequently examining records during the few days he remained in Greenville, and my recollection is that we examined the title to the Montgomery land together. I remembered that I

then discovered the Bosley deed of trust for the first time and think Mr. Estlin must have seen and read it during his numerous examinations of the records as it was bound to attract the attention of any one who was looking into Mr. Montgomery's titles. I noticed that the Bosley deed of trust had not been satisfied on the records, but had no means of knowing how much was due on it; and I noticed that it did not cover the same land covered by that of R. W. Estlin & Co.
278 I certified that there was no mortgage or deed of trust on the lands embraced in the Estlin deed of trust. Yet I had no doubt nor do I think any one else could entertain a doubt that it was the intention of the parties to the Bosley deed to embrace the same land. It embraces nearly all of the sections embraced in the other, but it locates them in township seventeen, range nine west, whereas Mr. Montgomery's Swiftwater plantation, the same embraced in the Estlin deed, is located in township seventeen, range eight. The lands embraced in the Estlin deed are in a compact body; and, to my certain knowledge, were mostly in the actual possession of and being cultivated by A. B. Montgomery during and before the year 1848, the year in which the Bosley deed was executed. While the lands described in the Bosley deed as in range nine, are scattered over the township in opposite ends of the same, and were at the date abovenamed and ever since in the possession of Maj. Wm. Hunt, Judge F. Griffin, Dr. W. S. Hood and others and their representatives or assigns. In order to more fully explain
279 the location of the sections, I hereto append a copy of the official maps of township seventeen, ranges 8 and 9, certified by R. A. O'Hea, county engineer and marked "Exhibit A."

A. B. Montgomery has never during my residence in the county, been in possession of any of said lands in range nine, described in the Bosley deed. Nor did I ever hear of his asserting any claim to the same. I append hereto a certified copy of a part of the assessment-roll for the year 1848, showing to whom the lands in said township were assessed at that time which was officially received, and I have no reason to doubt its correctness. It is marked "Exhibit B."

Cross-examined:

X-int. 1. Did you have any conversation with Mr. Estlin about the Bosley deed of trust; did you examine it with him, and did you express to him that you thought there was an error in giving the numbers of range in the Bosley deed, and that you thought the land em-
280 braced in his deed was the same as that embraced in the Bosley deed?

Ans. X-int. 1. That is my recollection. On reflection I feel confident that I had a conversation with him about the Bosley deed of trust, and that I called his attention to what I supposed was a mistake in the description of the land, and I believed that the same land was intended to be embraced in both deeds. I can only be positive that we had some conversation on the subject, but can't state positively what was said. I only recollect the general tenor of the conversation.

W. A. HAYCRAFT.

And I do further certify that the preceding deposition was reduced to writing by me and signed by the said W. A. Haycraft, and that I am not of counsel or attorney for either of the parties to said suit, nor am I interested in the event thereof.

W. R. TRIGG,
U. S. Commr. of the Circuit Court of the United States for Southern District of Mississippi.

(Here follows diagram marked page 281.)

282 EXHIBIT B TO DEPOSITION OF W. A. HAYCRAFT.

Copy assessment-roll of Washington Co., Miss., A. D. 1848. *Township* 17, *range* 8, *and* 17, *range* 9.

Name of owner.	Description of land.	Sec.	Town.	Range.	No. acres.
W. S. Hood	Lots 1, 2, & 3	1	17	8	243
David Hunt	" 4, 5, 6, 7, & 8	"	"	"	414
" "	" 1, 2, 3, 4, and 5	2	"	"	399
T. M. Simrall	" 6, 7, & 8	"	"	"	239
T. S. Theobald	" 1, 2, 3, 4, 5, 6, 7, & 8	3	"	"	642
Barr and Griffin	" 1, 2, 3, 4, 5, 6, 7, & 8	4	"	"	675
" "	" 1, 2, & 3 frac	5	"	"	255
J. T. McMurran	W. ½ S. W. ¼	6	"	"	80
Vacant	N. ½ & E. ½ S. W. ¼, & S. E. ¼	"	"	"	
J. T. McMurran	N. ½	7	"	"	320
"	S. ½	"	"	"	320
Solomon Bricornet	E. ½, and E. ½ N. W. ¼	8	"	"	400
L. Mundy	W. ½ N. W. ¼ and S. W. ¼	"	"	"	240
"	S. E. ¼ and E. ½ N. E. ¼	9	"	"	240
"	W. ½ N. E. ¼	"	"	"	80
"	N. W. ¼	"	"	"	160
A. B. Montgomery	E. ½ S. W. ¼	"	"	"	80
W. P. Montgomery	W. ½ S. W. ¼	"	"	"	80
L. Mundy	E. ½ N. E. ¼	10	"	"	80
A. B. and W. P. Montgomery	W. ½ N. E. ¼	"	"	"	80
" "	E. ½ S. W. ¼	"	"	"	80
" "	N. ½ S. W. ¼ & W. ½ N. W. ¼	"	"	"	160
" "	S. ½ N. W. ¼	"	"	"	80
283 A. B. and W. P. Montgomery	S. E. ¼	10	17	8	160
" "	W. ½ N. E. ¼, & E. ½ N. W. ¼	11	"	"	160
" "	W. ½ N. W. ¼	"	"	"	80
" "	S. E. ¼	"	"	"	160
" "	S. W. ¼, & E. ½ N. E. ¼	"	"	"	240
A. B. Montgomery	All	12	"	"	640
David Hunt	E. ½	13	"	"	320
A. B. Montgomery	E. ½ S. W. ¼, & E. ½ N. W. ¼	"	"	"	160
" "	W. ½ N. W. ¼	"	"	"	80
" "	W. ½ S. W. ¼	"	"	"	80
A. B. and W. P. Montgomery	E. ½	14	"	"	320
David Hunt	W. ½	"	"	"	320
Brown and Johnson	N. ½ and S. E. ¼	15	"	"	480
A. B. and W. P. Montgomery	S. W. ¼	"	"	"	160
School	All	16	"	"	
J. T. McMurran	W. ½ N. W. ¼ & W. ½ S. W. ¼	17	"	"	160
James Johnson	All	19	"	"	640
Brown & Johnson	N. ½	20	"	"	320
J. Watson	S. ½	"	"	"	320
A. H. Peck	W. ½	21	"	"	320
" "	W. ½ S. E. ¼, & W. ½ N. E. ¼	"	"	"	160
Vacant	E. ½ N. E. ¼, & E. ½ S. E. ¼	"	"	"	160
Vacant	E. ½, & E. ½ S. W. ¼, & E. ½ S. W. ¼	17	"	"	
John T. McMurran	All	18	"	"	640
A. H. Peck	E. ½ S. E. ¼	22	"	"	80
David Hunt	W. ½ S. E. ¼	"	"	"	80
" "	N. ½ S. W. ¼	"	"	"	480
284 Hollywood plantation	N. ½ of N. E. ¼	23	"	"	80
David Hunt	S. E. ¼, & S. ½ of N. E. ¼	"	"	"	240
Hollywood plantation	N. W. ¼	"	"	"	160
" "	E. ½ S. W. ¼	"	"	"	80
" " "	W. ½ S. W. ¼	"	"	"	80
David Hunt	Lots 1, 2, 3, 4, & 5 frac	24	"	"	381
David Hunt	Lots 3, 4, & 5	25	"	"	292
A. H. Peck	" 1, 2, 6, & 7	"	"	"	321
" "	W. ½	26	"	"	320
" "	W. ½ N. E. ¼, & W. ½ S. E. ¼	"	"	"	160
T. L. Simrall	E. ½ S. E. ¼	"	"	"	80
Vacant	E. ½ N. E. ¼	"	"	"	
J. Watson	N. W. ¼ & W. ½ N. E. ¼	27	"	"	240
H. Carpenter & Co	S. ½	"	"	"	320
Vacant	E. ½ N. E. ¼	"	"	"	
John M. Carpenter	All	28	"	"	640
J. H. Sims & Co. ½ int., E. H. Barker ½	E. ½	29	"	"	320
H. Carpenter & Co	W. ½	"	"	"	320
J. H. Sims & Co., ½ int., E. H. Barker ½	E. ½	30	"	"	320
John M. Carpenter	W ½	"	"	"	320
" "	N. ½	31	"	"	320
Absolom Petit	S. W. ¼ & W. ½ S. E. ¼	"	"	"	240
Vacant	E. ½ S. E. ¼	"	"	"	
H. Carpenter & Co	All	32	"	"	640
T. S. Theobald	Lots 4 & 5	33	"	"	212

EXHIBIT B—Continued.

Name of owner.	Description of land.	Sec.	Town.	Range.	No. acres.
285 State of Mississippi	Lot 1	33	"	"	-----
T. L. Simrall	" 2, 3, & 6	"	"	"	240
John M Carpenter	" 7	"	"	"	80
T. S. Theobald	All frac	34	"	"	96
Barr and Griffin	Lots 1, 2, and 3 frac	35	"	"	204
A. Pettit	" 1 and 2	36	"	"	161
Francis Griffin	" 5 and 6	"	"	"	237
" "	" 3, 4, and 7	"	"	"	241
A. Pettit	N. ½	37	"	"	320
W. R. Dent	S. ½	"	"	"	320
J. H. Sims & Co. ⅔ int. E. H. Carker ⅓	N. E. ¼	38	"	"	160
State of Mississippi	N. W. ¼	"	"	"	-----
W. R. Dent	S. ½	"	"	"	320
					20, 377
Warfield & Carneal	All	1	17	9	641
" "	All	2	"	"	646
T. D. Elliott	All	3	"	"	642
Francis Griffin	All	4	"	"	637
" "	All	5	"	"	642
" "	All	6	"	"	446
" "	All	7	"	"	464
And. Knox	All	8	"	"	643
" "	All	9	"	"	556
State of Mississippi	Lot 1	10	"	"	-----
And. Knox	" 2, 3, and 4	10	"	"	231
State of Mississippi	Lots 5, 6, 7, and 8	10	"	"	-----
286 " "	" 1, 2, 3, 4, 5, & 6	11	"	"	-----
Joseph Purvis	" 7 & 8	"	"	"	158
" "	" 3 & 4	12	"	"	160
W. S. Horn	" 1, 2, 5, 6, 7, & 8	"	"	"	481
" "	All frac	13	"	"	104
W. Hunt	N. ½	14	"	"	320
W. P. Montgomery	E. ½ S. E. ¼	"	"	"	80
W. Hunt	W. ½ S. E. ¼ and S. W. ¼	"	"	"	240
W. Hunt	N. E. ¼ and E. ½ N. W. ¼	15	17	9	240
Warfield and Carneal	W. ½ N. W. ¼	"	"	"	80
T. J. Likens	W. ½ S. E. ¼	"	"	"	80
W. Hunt	S. W. ¼	"	"	"	160
Vacant	E. ½ S. E. ¼	"	"	"	-----
School	All frac	16	"	"	-----
Warfield and Carneal	N. ½	17	"	"	75
T. D. Elliot	S. ½	"	"	"	73
T. J. Likens	N. E. ¼	18	"	"	160
Warfield and Carneal	E. ½ N. W. ¼	"	"	"	80
T. D. Elliott	W. ½ N. W. ¼ & W. ½ S. W. ¼	"	"	"	160
Vacant	E. ½ S. W. ¼ & S. E. ¼	"	"	"	-----
T. J. Likens	E. ½ N. E. ¼ & E. ½ S. E. ¼	19	"	"	160
" "	W. ½ S. W. ¼ & W. ½ N. W. ¼	"	"	"	160
W. Hunt	W. ½ N. E. ¼ & E. ½ N. W. ¼	"	"	"	160
" "	W. ½ S. E. ¼ & E. ½ S. W. ¼	"	"	"	160
Hollywood plantation	N. E. ¼ & W. ½ S. E. ¼	20	"	"	240
W. Hunt	N. W. ¼	20	"	"	160
287 Hollywood plantation	E ½ S. W. ¼ & E. ½ S. E. ¼	20	"	"	160
Vacant	W. ½ S. W. ¼	"	"	"	-----
W. Hunt	N. E. ¼	21	"	"	160
T. J. Likens	S. W. ¼	"	"	"	160
Vacant	N. W. ¼ and S. E. ¼	"	"	"	-----
Francis Griffin	All frac	22	"	"	138
Hollywood plantation	All "	23	"	"	80
State of Mississippi	Lot 2	24	"	"	-----
Francis Griffin	" 3 & 4	"	"	"	160
Hollywood plantation	" 1 & 5	"	"	"	147
" "	" 1	25	"	"	142
W. S. Horn	" 2	"	"	"	134
					10, 897

STATE OF MISSISSIPPI,
Washington County;

I, John Fawn, clerk of the chancery court in and for said county, hereby certify that the foregoing (5) five pages, contain a correct copy of the names of the owners, description of land, and number of acres, in township 17, range 8 W., and township 17, range 9 west, as the same appear on the assessment-roll of Washington County, Mississippi, for the year 1848, on file in my office.

Given under my hand and official seal this 29th day of June, A. D. 1871.

[SEAL.] JOHN FAWN, *Clerk*,
By JOHN DAVIS, *D. C.*

288 And now afterwards, to wit, on the 21st day of November, 1872, the same being a day in the regular November term, A. D. 1872, of said circuit court of the United States, begun and held in the court-room thereof at Jackson, on the 1st Monday of November, A. D. 1872, the following decree was rendered in this cause by said court and entered upon the minutes thereof, to wit:

CANAL AND BANKING CO. ET AL.
vs.
A. B. MONTGOMERY ET AL. } N. S. 99.

This cause came on to be heard at this term, and was argued by counsel; and thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

1. That the sale made by Alexander Yerger, substituted trustee or commissioner, on the eighth day of February, 1868, under a final decree rendered by this court in a chancery cause wherein Charles Bos-
289 ley was complainant, and A. B. Montgomery and wife were defendants, of certain lands described in the pleadings in said cause, as well as in a certain deed in trust made by A. B. Montgomery and wife to Charles Bosley on the 13th of July, 1868, a copy of which is exhibited with the answers in this cause, at which said Charles Bosley was the purchaser, be and the same is hereby adjudged to be null and void.

2. And also that the deed made by said Alexander Yerger, commissioner or substituted trustee, to said Charles Bosley, made on the 8th day of February, 1868, purporting to convey said lands, is hereby declared and adjudged to be null and void.

3. It is further ordered and adjudged that the supplemental proceedings in this court for the correction of the alleged mistake in the description of the land in said deed in trust to Bosley, wherein said Bosley was complainant and A. B. Montgomery and wife and Alexander Yerger were defendants, including all the decrees and orders had
290 in said proceedings be and the same are declared and adjudged to be null and void. And the deed made by said Alexander Yerger, substituted trustee, A. B. Montgomery and his wife Davidella, under the final decree in said supplemental proceedings, is hereby adjudged to be null and void.

4. It is further ordered and adjudged by the court that the said deed in trust, made by A. B. Montgomery and wife, on the 13th day of July, 1848, to Overton, trustee, to secure a debt due to said Bosley be reformed and corrected so as to conform to the true intention of the parties to said deed, and that the description of the land described in said

deed be so corrected as to locate the land in range number eight (8) west instead of in range number nine (9) west, as described in said deed. And it is ordered and adjudged that the said deed in trust, so corrected and reformed, shall stand as a first lien on the land so described and located in range number (8) west, for the security of the debt mentioned in said deed.

291 5. It is also ordered and adjudged that the deed in trust made by A. B. Montgomery to W. E. Nugent and W. G. Yerger, trustees, on the 22d day of May, 1866, to secure the payment of the notes described in said deed in trust, shall constitute a second lien on said land described in the deed in trust made by said Montgomery as aforesaid to secure the debt due to Bosley; and shall constitute and stand as a first lien on all that portion of the tract of land embraced in said first-named deed in trust which is not included in the deed in trust to Bosley.

6. It is adjudged and decreed that there was due to Victor Montgomery, Davidella Montgomery, and Wm. F. Montgomery, as assignees of Charles Bosley, on the 30th day of June, 1868, the date of their purchase from said Bosley, the sum of $15,000.00, of the debt secured by said deed in trust to Bosley.

This cause is now referred to Archy Mc.Gehee and J. D. Stewart, special commissioners of this court, who are hereby ordered and di-

292 rected to ascertain and report to this court, by the 1st Monday of February next, the whole amount due on the 30th day of June, 1868, on said Bosley debt, described in the deed of trust to Bosley, calculating interest on said debt at the rate of 8 per centum per annum.

They will then deduct the sum of $15,000 assigned to said Victor, Davidella, and Wm. F. Montgomery. Said commissioners will then report the amount due to said Bosley, on the remaining portion of said sum, calculating interest thereon at the rate of eight (8) per cent. per annum to date. And also will report the amounts due to said Victor, Davidella, and W. F. Montgomery, on their said portion, calculating interest thereon at the same rate of interest to date.

Said commissioners will then ascertain from proper evidence, and report the fair rental value per annum of said lands from the 8th day of February, 1868, to date; and will also ascertain and report the value of all permanent and valuable improvements made on said land by said Victor, Davidella, and W. F. Montgomery, as well as the

293 amount of all taxes on said lands paid by them since said 30 day June, 1868.

Said commissioners will also ascertain and report to this court all such taxes on the lands set out in the pleadings as were paid by said Victor, William F., and Davidella Montgomery, anterior to said 30th day of June, 1868, and all moneys expended by them or for them in the purchase of tax-titles to the lands set out in said pleadings at any time anterior or subsequent to said 30th day of June, 1868. This report will be made separately, and all questions of law thereon arising are reserved until the coming in of said report.

The value of said improvements and said taxes to be deducted from the rental value of said lands, and the sum so remaining to be then deducted from the amount due to said Victor, Davidella, and W. F. Montgomery, on the portion of said Bosley debt assigned to them as aforesaid.

And said commissioners will report to the court the sum then remaining due, if any, to said Victor, Davidella, and W. F. Montgomery.

294 Said commissioners shall give to all of the parties in interest, reasonable notice of the time and place of taking this account.

And said parties may either introduce oral evidence, or the depositions of witnesses before said commissioners, as they may prefer.

Said Victor, William F., and Davidella, Montgomery, may introduce proof before said commissioners to show that they are the holders by assignment of all the Bosley debt, and if this fact be established to the satisfaction of the said commissioners they will so report.

Said commissioners are further ordered to give notice for thirty days in a public newspaper published in Jackson, Mississippi, to all parties holding or claiming notes secured by the deed in trust made by A. B. Montgomery as aforesaid, on the 22nd May, 1866, to appear and prove their claims. And after the expiration of the time named in said notice, the commissioners will ascertain and report to the court the sums due respectively to the parties appearing and proving said claims in the form
prescribed by the bankrupt act, calculating interest thereon at
295 the rate of 6 per cent. per annum, to the 18th day of February, 1868; and stating the amount due on each of said notes, and the names of the respective holders.

It is further ordered that either one of said commissioners may execute this order in the event that both fail from any cause to act. It is provided, however, that all parties who prove their claims and desire the benefit of the said Estlin deed in trust, shall be required to bear their fair proportion of the costs, fees, and expenses of this litigation, to be adjusted hereafter by the court.

All of said lands embraced in said deed in trust are hereby adjudged to be assets in bankruptcy of said A. B. Montgomery, bankrupt. And upon the coming in of the master's report, the court will render a decree or order of sale, on such terms as may be deemed best, for the payment of the sums found due to said secured creditors according to their respective equities as fixed by this order.

Ordered and decreed this the 21st day of November, 1872.

R. A. HILL, *Judge.*

296 And on the 20th day of May, A. D. 1873, the said special commissioners in this cause, appointed by the preceding decree, made two reports herein, which, with the depositions, exhibits, and papers filed with the same, are in the words and figures following, to wit:

Commissioner's report.

Circuit court of the United States for the southern district of Mississippi.

IN THE MATTER OF THE CANAL AND BANKING CO. ET AL., *vs.* A. B. MONTGOMERY ET AL.	In equity. 99, ch'y.

The undersigned, appointed special commissioners to state an account herein, would respectfully represent that, in accordance with the decree herein rendered, they gave the notice prescribed and proceeded to take the requisite proof and now submit the following report:

On examination they find that William F., Victor, and Davidella
297 Montgomery are the holders and owners of the entire Bosley debt, a detailed statement of which will be found in the portion of this report devoted to such matter.

Your commissioner, Archy McGehee, to whom it was more particularly

referred to ascertain and report the fair annual rental value of the lands in the decree mentioned and the value of permanent improvements made by the said Wm. F. Victor and Davidella Montgomery, as well as all taxes paid by them since the 30th day of June, 1868, presents the following:

As regards the rental value of the property since Febr'y 8, 1868, to the same date of 1873, the question has been difficult of solution owing to the different estimates placed upon the same by the parties who would naturally be supposed best informed on the subject. The estimates vary widely in some instances, which is readily accounted for from the fact that in some localities rents are higher by 25 or even 50 per cent. than in others but a few miles removed and on property to all appearances equally desirable.

For the portion of the year 1868 (say after June, when the Mont-
298 gomerys came into possession) there could be no claim for rent, as it was too late to plant a crop of any kind, and the care of the improvements would have been a fair return for their use. The rent for 1869 cannot be a matter of controversy, as it was for that year rented to Mr. Wm. L. Nugent for the sum of six thousand dollars.

For 1870, the testimony as to its rental value ranges from one to six thousand dollars. The preponderance of testimony is in favor of four thousand dollars and commissioner designates that sum.

For the two succeeding years, 1871 and 1872, the rental value commissioner fixes at the sum of five thousand dollars per annum, making a total for the years 1869, '70, '71, and '72, of twenty thousand dollars.

Value of permanent improvements.

For the better elucidation of this portion of the report, commissioner here copies the account filed by the Montgomerys, setting forth each particular item, and mark in separate columns those allowed and those which he thinks should be rejected.

299	Allowed.	Rejected.
Item, July 31st, 1868, moving 3 single cabins to orchard, @ $125 each	($ 1)	375 00
Item, Aug. 1st, 1868, repairs and addition to stables for mules	($ 2)	100 00
" " 25, " cleaning out 260 rods of 6 × 8 ditch	520 00	
(Commissioner submits that this claim should be allowed, as it is indispensible to the place, and a much larger sum expended on a new ditch would not have answered the purpose so well.)		
Item, Nov. 20th, 1868, 1,500 new rails put on fence, @ $50 per M	75 00	
Item, Feb'ry 3d, 1869, moving and converting log-crib into a house of 4 rooms, with entry, sheds, &c., complete	($ 3)	300 00
Item, Feb'ry 3d, 1869, 2 cabins, 1 crib, 1 stable, and cotton-house, built of new material, at orchard	375 00	
Mar. 1st, 1869, cleaning out 1,312½ rods ditching, @ $1.00 per rod	1,312 50	
Item, Sept. 1st, 1869, 10,000 new rails, @ $50 per M	500 00	
" " 23d, 1869, driven well, 72	110 00	
" Dec'r 1st, 1869, patching boiler and repairs to machinery and gin-house	500 00	
300 (This work was absolutely necessary to save the building and machinery, and put it in condition to be used with any degree of safety.)		
Item, Feb. 5, 1870, 2 single cabins moved, all complete	($ 4)	250 00
" June 30, 1870, 4 double cabins moved, all complete, $250 each	($ 5)	1,000 00
Item, June 30, 1870, driven well, 85 feet	130 00	

	Allowed.	Rejected.
" " " " cleaning out 703 rods of ditching, @ $1.00 per rod	703 00	
Item, Sept. 3d, 1870, repairs to gin, press-machinery, dwelling-house, and cementing 2 cisterns	398 00	
Item, Nov. 1st, 1870, moving and erecting stables, with new sills.	(§ 6)	250 00
" " 29, 1870, 5,000 new rails on fence, @ $50 per M...	250 00	
" " 20, 1870, paid Rothwell judgment, it being a claim for work done on boiler in 1867	(§7)	361 00
Item, Mar. 30, 1871, 1 double cabin moved, all complete	(§ 8)	250 00
" May 3d, 1871, 52½ rods plank fence moved, @ $1.50 per rod.	(§ 9)	78 25
Item, July 31st, 1871, 132½ rods plank fence moved, @ $1.50 per rod	(§ 10)	198 00
301 Item, Dec. 22d, 1871, 20,000 new rails on fence, @ $50 per M	1,000 00	
Item, Dec. 22d, 1871, 5 houses, containing 6 rooms, built of new material, on swamp field, @ $50 per room	900 00	
Item, Dec. 22d, 1871, 2 cribs, 1 cotton-house & stable, new material	175 00	
Item, Dec. 22d, 1871, 2 wells dug and curbed	100 00	
" " " " 1 double cabin moved, all complete, (Carter's)	(§ 11)	250 00
Item, Dec. 30, 1871, re-erecting same and crib, blown over by wind	(§ 12)	250 00
Item, Jan'y 22, 1872, single cabin moved, all complete, (Spencer's)	(§ 13)	125 00
Item, Feb. 22, 1872, single cabin moved, all complete, (Charles's)	(§ 14)	125 00
" June 30th, 1872, cleaning up 40 acres of briar-patch and putting same in cultivation, @ $5.00 per acre	(§ 15)	200 00
Item, Oct. 28, 1872, deepening well and putting down curbing..	25 00	
" Nov. 3d, 1872, dwelling-house, 4-room, all new material..	2,500 00	
" " " " to servant's house, kitchen, crib, stable, sheds, well, with curbing; hen-house, gates lots, &c..	1,000 00	
302 (These are new buildings on the portion of the place now occupied by W. F. Montgomery.)		
Item, Dec. 30, 1872. 1 single cabin, moved, all complete	§16	125 00
" " " " 3 double cabins moved, all complete	§17	750 00
" " " " New foundation to cotton-press, $150; new pinion, $50	200 00	
" " " " Repairing brick kitchen and single chimney	35 00	
" " " " Repairing servant's house, chimney, sheds, doors, &c	25 00	
These repairs necessary.		
Total allowed and rejected	10,313 50	4,512 50

Amount of taxes on said lands paid by said Montgomerys since 30th June, 1868:

	Allowed.	Rejected. Interest and 50 per cent. damages.
July 2d, 1869. Tax-title from liquidating levee board..	$132 20	$233 16
Aug. 12th, 1869. Redemption of land from 10c. levee board....	721 45	1,637 24
Mar. 12th, 1870. Bridge-tax on land	51 04	68 67
Apl. 29th, 1870. Tax paid on land	478 85	623 79
Feb. 28th, 1871. " " " "	371 08	320 95
Apl. 5th, 1871. " Ten cent levee board	255 20	207 51
303 June 13th, 1871. Tax paid five cent. levee board	130 60	165 58
Dec. 1st, 1871. Land-tax	600 60	291 82
Apl. 6th, 1872. Tax paid levee board	255 20	79 66
Apl. 30th, 1872. " " 5c. levee board	127 60	35 07
Dec 2d, 1872. Land-tax	1,377 81	2,332 59
	4,501 63	5,996 04

The amount rejected above is the int. and damages, 50 per cent. claimed.

This portion of the report stands thus:

Rental value of land to be charged against V., W. F., and D. Montgomery	$20,000 00
Improvements to be credited to Montgomerys	10,313 50
Amount of taxes	4,501 63

Balance against the Montgomerys thus far, $5,184.87.

Respectfully submitted,

ARCHY McGEHEE.

Filed May 20th, 1873.

G. T. SWANN, *Clk.*

304 The following depositions of John C. Head and other witnesses, taken before Commissioner McGehee, at Greenville, Mississippi, marked Exhibit M, with exhibits numbered 1 to 18 inclusive, filed with commissioner, and deposition of W. L. Nugent, also filed with the commissioner, were returned and filed by said commissioner in said court, with the foregoing report:

Depositions of John C. Head and others, marked Exhibit M.

NOTICE.

In the circuit court of the United States for the southern district of Mississippi.

CANAL BANK OF NEW ORLEANS, LA., *vs.* A. B. MONTGOMERY ET AL. } In equity. N. S., 99.

To Frank Valliant, ass'e, Victor, Wm. F., and Davidella Montgomery:

You are hereby notified that I will, on the 20th and succeeding days in January next, attend at Greenville for the purpose of taking depositions in said cause *under* pursuance of a decree rendered herein on the 20th Nov., 1873, at which time you may be present with your witnesses.

A. McGEHEE, *Commr.*

305 (If parties will waive the 20 days' notice, and so inform me, I will attend on the 15th of January. Please acknowledge service and return, with answer to this suggestion. It will suit me much better.

A. McGEHEE.

I acknowledge service, and will waive the 20 days notice, and will consent to take depositions whenever the commissioner comes to Greenville for the purpose to take said depositions.

F. VALLIANT, *Assignee.*

I acknowledge service, and will waive the 20 days notice, and have taken proof before S. W. Ferguson, U. S. com'r, and think it unnecessary for Commissioner McGehee to come here on that business.

Jan'y 8th, 1873.

VICTOR MONTGOMERY,
Defendant.

Circuit court of the United States, southern district of Mississippi.

IN THE MATTER OF THE CANAL AND BANKING CO. ET AL.
vs.
A. B. MONTGOMERY ET. AL.
} In equity. N. S., 99.

306 This 20th day of January, 1873, at Greenville, in the county of Washington, State of Mississippi, and district aforesaid, personally appeared before me, Archy McGehee, U. S. commissioner in and for said district, JOHN C. HEAD, who being by me first duly sworn, did testify as follows:

My name is John C. Head; my age 25 years; am a farmer by occupation, and a resident of Washington County; have resided in this county six years. I am managing for my brother, who is a lessee of land in this county. We are renting out land to laborers at $10.00 per acre. This is on the W. C. Blanton plantation. We have already rented the entire place, about 400 acres, at that price; could have rented as much more at the same price. This place is about five miles from the Montgomery Swiftwater plantation. There is no gin-house on the W. C. Blanton place. I have passed through the Swiftwater place several times; sufficiently often to give me a general idea of the place.

Int. 1st. Had you been placed in possession of the Montgomery Swiftwater plantation in the beginning of the year 1868, how long do
307 you think it would have taken you to rent out the whole of the cleared land on that plantation, and at what price?

Ans. Had I taken possession in the winter of 1868, I could have rented at least half of the place at $10.00 per acre or its equivalent in cotton, for the ensuing year; by the year 1870, I could have disposed of the entire place on the same terms. I understand there are about 1,500 acres of cleared land on that place. There is now and has been a great demand for land by persons wishing to rent at those figures, say for the last three years, laborers preferring to rent to working on shares. The owners of land preferring to work on shares rather than rent even at that price. Where the rent is taken in cotton, the price varies considerably, owing to the condition of the land. I would consider about 80 pounds of lint-cotton per acre the average rent demanded and paid. The average price of cotton since the year 1869, has been, I think, about 18 cents. I can give no information as to the extent or value of any improvements put on the place since 1868.

J. C. HEAD.

308 Also, at the same time and place appeared ERNEST BOURGES, who, being sworn, testified as follows:

My name is Ernest Bourges; my age 36 years; by occupation a planter; a resident of this county since 1st of January, 1868. My wife is owner of a plantation on Deer Creek, about 10 miles from Greenville, containing 2,387 acres of land, of which about 1,100 acres are cleared. I rent the most of the land, cultivating about 200 acres on shares, and renting the balance, excepting perhaps 100 acres. The best of the land I get $10 rent per acre for, and half a cent per lb. for ginning their crop. The balance I get $8.00 per acre for, and half a cent per lb. for ginning, except for about 100 acres badly grown up, for which I get $2,000 for three years. I think that $10 per acre rent or 80 lbs. of lint-cotton per acre, or one-fourth of the entire crops is the usual and customary rates of rent, and there is no difficulty in renting land at those rates.

Since 1869, I think, the average price of cotton would be about 15c.; I mean for our swamp cotton. I do not know enough of the Mont-
309 gomery place to give an opinion as to its value, or to enable me to speak of the improvements made upon it since 1868. Hav not been on it and in reality know nothing about it.

ERN. BOURGES.

A. B. Montgomery, witness for deft.

STATE OF MISSISSIPPI,
Washington County:

This day, the 22d day of January, 1873, before me, Archy McGehee, U. S. commissioner, personally came A. B. MONTGOMERY, who, being by me first duly sworn, did depose as follows:

My name is A. B. Montgomery; my age is 70 years; am a resident of this county, and by occupation a planter. I have claimed this as my residence since 1829. I am the father of Victor, Davidella, and W. F. Montgomery. When the Swiftwater place was sold, on the 8th day of February, A. D. 1868, I, at the request of Mr. James R. Yerger, agent and attorney for Charles Bosley, remained on the place. I signed an instrument of writing stating that I held the place for Mr. Bosley. I
310 was not to pay any rent for the year 1868, having no means with which to cultivate the place. I am conversant with the place, and do not think it could have been rented at any price. Mr. Yerger told me he had tried to rent it but could get no offer for it. I mean for 1868.* (See note at bottom.)

Witness was here shown Exhibit 2, filed herewith, and testifies that he, witness, did none of the work therein set forth, either while occupying the place in his own right, or while holding under Bosley; he holding under Bosley from Feb'y, 1868, to June 1868, at which time the place was turned over to the purchasers buying from Bosley.

A. B. MONTGOMERY.

Witness amends his statement thus:

*I may have drawn this as an inference from Mr. Yerger's saying he could not rent the place.

A. B. MONTGOMERY.

S. A. Allison, witness for deft.

At the same time and place, Jan'y 22, 1873, came SAMUEL A. ALLISON, who, being sworn, says:

311 My name is Samuel A. Allison; my age 26 years; my occupation that of farming. I have known the Swiftwater plantation since 1868. I lived on the place in 1869 and 1870; made a crop on it each of those years.

Int. 1st. Examine item of date July 31st, 1863, for removing three single cabins to orchard and putting up chimneys, and state what is the value of that work?

Ans. I think $375.00 would be a moderate price. I have helped to move cabins and put them up. I have built cabins from the stump, and would as soon build a new cabin as remove and put up an old one; I mean after the logs for the new cabin are hauled on the ground.

Witness explains that he means he would be as willing to haul up new

logs cut off the proper length, hew them out and put them up, as to pull down an old cabin, haul the logs, and put them up.

Int. 2d. Examine item of date August 25, 1868, "cleaning out 260 rods of ditch 6 x 8 feet, bottom and top," and state if you measured that ditch, and if that measure is correct.

Ans. I did; it is correct. I call this the swamp-ditch. Henry
312 Buford (col'd) assisted me in the measurement, carrying one end of the chain.

Int. 3rd. See item of Feb'y 3, "moving and converting crib into a house of 4 rooms with entry and sheds complete," and state the value of moving and putting it up.

Ans. I think it worth $275.

Int. 4. See next item, same date, "2 cabins, 1 crib, stable, and cotton-house, built of new material at orchard," and state whether the price there charged, $375.00 is too much.

Ans. I think it is a moderate price; I assisted in doing the work.

Int. 5. See item, March 1st, "cleaning out 1,312½ rods of ditching," and answer if you measured such ditching?

Ans. I did; I assisted in doing 456 rods of this work myself. These ditches, comprising the 1,312½ rods I designate as follows: The lane ditch, apple-tree ditch, plum-tree ditch, barley ditch, horse ditch, Edmund Barr ditch, brickyard ditch, and elm ditch, I assisted in doing myself, and named as above. The balance I designate as follows: The Donnel-
son ditch, thorn-tree ditch, short ditch, weed ditch, cotton ditch,
313 corn ditch, gate ditch, big ditch, bridge ditch, fence ditch, frog-pond ditch, duck-pond ditch, post ditch, blackberry ditch, snag ditch, straight ditch, and Ephraim ditch. I was assisted by Charles Campbell and Joe Simonds in measuring this work.

Int. 6th. State of your own knowledge how many new rails were put on the fence on this place during the year 1869.

Ans. I know of the making of ¼ of a mile of new fence on the front, say 2,000 rails. I also remember about 300 put on near the house. I know of some more, but think 2,500 would be about the number I assisted in putting on. Other fencing was done, about which I can make no accurate estimate. It cost, in my opinion, about $3 per hundred to make, haul, and put up these rails.

Int. 7th. Examine the following items:

Feb'y 5th, 1870—To 2 single cabins moved, all complete.....	$250 00
June 30th, 1870—4 double cabins.....	1,000 00
" Cleaning out 703 rods ditching, @ $1.....	703 00
Sept. 3d—Patching boiler, $240.00; new gibbs, $10..... Follower blocks, $25.00.....	275 00
Nov. 1st, '70—Moving and erecting stable.....	250 00
5,000 new rails put on fence, @ $50 per M.....	250 00

314 and state what you know about them. Were those improve ments on the property at the time as charged? What do you know about the value of each item? Is the charge made, in your opinion, reasonable or exorbitant?

Ans. As to item 1st, I know the two single cabins were removed an rebuilt. It is worth $250.00 to do this work as done. 2nd. These im provements were and are on the property at the time as charged. 3rd Value as stated by me. The four cabins were, about the time charged, on the property; are there now. They are worth $1,000. I mean it is worth that to remove and rebuild them. The item 703 rods ditching was measured by me correctly; this ditching has not

been before alluded to. Henry Buford and Bill Hall assisted me in measuring these ditches. I know of the patching of the boiler in 1870, some time in September. I know nothing of the new gibbs. Assisted in putting in a new follower block. As to the price of patching the boiler, I heard Mr. Reading, a machinist, say he would not do it for less than $240.00. The charge of $25.00 for the follower block is not
315 exorbitant. I know the stable was moved in 1870. It is worth, as charged, $250.00; the moving and putting up again. I think at least 5,000 new rails were put on the fence around the swamp field. The quality of the rails and the distance hauled being taken into consideration, this work is worth $40.00 per thousand. It is worth $2.00 per rod to remove plank fence and put it up elsewhere, renewing posts, &c., where needed.

S. A. ALLISON.

At the same time and place came W. P. MONTGOMERY, who, being sworn, testifies as follows:

My name is William Pickney Montgomery. I reside in Washington County; have done so since 1828; am 73 years of age; a planter by occupation; the uncle of Victor, Davidella, and Wm. F. Montgomery.

I am familiar with the A. B. Montgomery place; am not aware of any offer having been made in 1868 to rent the place, nor can I estimate what, under the conditions of the place, would have been its rental value. I myself rented 240 acres for $1,600 that year, of which I
316 received but $800. The 240 acres lay adjacent to the A. B. Montgomery place. Half the place was not under fence and consequently not rentable. In 1869 Capt. Nugent rented the place exclusive of one house and 100 acres of cleared land for $6,000, as I was informed by Capt. Nugent himself. I think this was an exorbitant valuation, (rental.) I rented in 1870 the same amount of land with 1,000 bushels corn, 23 mules, and farming utensils, and six yoke of oxen, to Capt. Nugent for $4,000. Witness corrects this statement thus: "I rented more cleared land under fence than there was under fence on the A. B. Montgomery place, is what I mean." There was a partial fence on about 1,250 acres of the A. B. Montgomery place. The fencing on the A. B. Montgomery place was in worse condition in 1870 than in 1869. I consider that $4,000 in 1870 would, in the condition of the place, have been a fair rental value for the property. I would not have given more. So far as I am informed there was no demand for places for rent in 1871 in this neighborhood. I do not think the rental value of this land
317 in 1871 equal to that of 1870. In its then condition I would say $3,500 would have been its fair rental value. *I doubt very much if the place could have been rented for any price in 1872.

W. P. MONTGOMERY.

*I make this statement from the fact that I know of no offer for lands in this neighborhood for that year.

W. P. MONTGOMERY.

JAN'Y 23*d*, 1873.

Met pursuant to adjournment.

Mr. S. A. Allison cross-examined by Mr. F. Valliant:

I am not related to any of the parties to this suit.

X-int. 1st. Did not the Montgomerys borrow the money to pay the Bosley debt from your uncle Robert Allison?

Ans. They borrowed part of it from him.

X 2d. Did they borrow any part of it from any other friend or relative of yours?

Ans. No.

X 3rd. Have they paid to your uncle all they borrowed from him

318 Ans. I think not.

X-int. 4. Are you your uncle's agent to assist in the collection of this debt? Do you know who is?

Ans. No; I do not know who is.

X 5. Describe the three single cabins spoken of in your answer to int. 1st in your direct examination, and state if the body of said cabins were not composed of sawed cypress logs, notched and fitted at the end.

Ans. Two of them were so composed; the other was made of plank.

X-int. 6. How long would it take 2 good men to pull down one of those log cabins and haul it a mile and put it up?

Ans. Not short of 12 days. I' took me and another man 3 days to nail on a roof on one of the moved cabins.

X-int. 7. Describe the kind of material which composed the 2 cabins, 1 crib, and stables, and cotton-house spoken of in int. 4 of your examination, and the size of the same.

Ans. The cabins were 12x16 feet. They are composed of round

319 cotton-wood and logs. The stable was composed of cypress posts put in the ground enclosed with good cypress pickets. The crib was composed of round logs; was 20x14 size, 11 feet high. The cotton-house of same material, good, heavy split pickets for floor; would hold 16 bales of cotton.

X-int. 8th. Describe the quality of the rails mentioned by you in answer to int. 6th.

Ans. They were principally made of young cotton-wood trees, 12 to 18 inches diameter, some oak, possibly a few willow. They were cut on the front; some hauled half a mile, others at distances ranging from 100 yards to half a mile. I do not know what was paid for cutting and splitting said rails.

X-int. 9th. Were the 2 cabins mentioned in int. 7th under date Feb'y 5th, 1870, composed of logs or plank?

Ans. One was composed of heavy sawed lumber. Of the other I cannot say.

X-int. 10th. Of what were the 4 double cabins composed mentioned in of June 30th, 1870?

Ans. Of cypress logs sawed, notched, and fitted at the ends.

320 The farthest cabin was hauled a mile; the other three three-quarters of a mile.

X-int. 11th. Describe the stable mentioned in your answer to int. 7, item Nov. 1st, 1870.

Ans. It is of sawed cypress logs, has 3 doors, 3 double stalls; is about 25 or 30 feet long, about 12 feet wide and 8 feet high; covered with 3-foot boards. We put in one large new sill the entire length of the house. It was moved from the north edge of the quarter-house lot to the dwelling-house lot, about 200 yards. There is a loft, good and close, to hold corn, over this stable, made of good plank. It is principally the material of the old lott.

X-int. 12. Of what material was the rails enclosing the swamp field (the new rails) composed?

Ans. Of ash, willow, and some hackberry—large rails. There were more of willow and hackberry than of ash.

S. A. ALLISON.

HARRY BUFORD sworn, testifies as follows:

My name is Henry Buford. My age about 35 or 36 years; by
321 occupation a laborer; I live on Swiftwater plantation; have lived there since 1865.

I assisted in doing the ditching to which my attention is called. I assisted Mr. Allison in measuring the work, showing him just such portions as were cleaned out within my knowledge. [Refers to item of Aug. 25th, 1868. A. McGehee, comm'r.]

(Witness was then referred to item of March 1st, 1869.)

I assisted in doing this work and also assisted Mr. Allison, as stated above, in measuring, all which I know was done of my own knowledge.

In relation to patching the boiler and repairs to the machinery of the gin, I know some work was done. The boiler was patched; a new cast cog-wheel, weight 75 or 100 lbs., put to the press; a new head put on the piston-rod; a cold-water pipe of iron from the tank to the pump; two or three patches were put on the boiler, one 12 or 13 inches one way, 18 inches the other; another smaller one; one water-guage and one steam-guage were also put in. [Refers to 1869, Decr. 1st.]

(Witness was here referred to ditches by name, item of June 30th, 1870.)

I assisted in doing this ditching and assisted Mr. Allison in
322 measuring such of it as I know to have been done in the year 1870.

As to patching the boiler, new gibbs, and follower-block of date, Sept. 3d, 1870, I know this work was done at that time; helped to do part of it. This work was necessary.

Cross-examined by Mr. Valliant:

In cleaning out these ditches we took the dirt out of the bottom. Some were large, some small ditches. Some of them 4 feet wide at top, 1½ feet at bottom. One was eight feet at top, 6 feet at bottom. They range from 2 feet wide at top to 8 feet width. Some of these ditches have filled up considerably, others, the most of them still drain well. I was hired on the place for monthly wages in the year 1868, at the rate of $8 or $10 *dollars* per month, my rations and tobacco. My weekly rations consisted of four or five and and half lbs. of meat, a peck of meal, and a plug of tobacco, and it was during this year and under this contract I did the work on the swamp ditch which is mentioned as item of Aug. 26, 1868.

323 I worked on some of the ditches in 1869. I worked on the lane ditch, on all that were worked on at the orchard, the apple-tree ditch, plum-tree ditch, barley ditch, horse ditch, Edmund Barr ditch, brick-yard ditch, elm ditch. These ditches in width at the top would range from 2 to four feet. I did this work under farm-contract. Mr. Montgomery was to give me ¼ of the crop; he furnishing provisions, team, implements, the same rations as above, two suits of clothes, a pair of shoes, a pair of pants, shirt, hat, and pair of boots in the winter. I was to work the crop and do the general ordinary plantation work, and among other things to do my share in cleaning out ditches. All the men, except Mr. Allison, who assisted me in doing this ditch work were under contract similar to the one I was working under, so far as I know. I worked on the ditches in 1870, not under the same contract, as I got one-half of the crop. The agreement in regard to the ditching was the same. I never received any money directly for working on the ditches from Mr.

Montgomery. These ditches are essentially necessary to the place, and it would be much injured without them.

his
HENRY + BUFORD.
mark.

Test:

A. McGEHEE, *Comr.*

324 CHARLES CAMPBELL, sworn, testifies:

My name is Charles Campbell. I am about 50 years of age; a laborer by occupation. I live on Swiftwater plantation; have lived there ever since the war.

(Witness was here referred to Exhibit No. 2, which was explained to him, and states:)

I assisted in doing the work referred to in item of Aug. 25, 1868, and March 1st, 1869. I assisted Mr. Allison in measuring all I did in 1869. The ditching done in 1868 was worth $2.00 per rod; that in 1869 was worth $1.00 per rod. I received no money for ditching specifically. In 1868 I was to receive $6.00 per month and rations, and tobacco the same as Bluford. The work I did on the ditches that year was under contract. In 1869 I worked for a portion of the crop, and was to do my share of cleaning out ditches; I could clean out 2 rods per day of the swamp ditch; of the smaller ditches I could clean out from four or five rods per day.

his
CHARLES + CAMPBELL.
mark.

Teste:

A. McGEHEE, *Commr.*

325 WILLIAM HALL, being sworn, testifies:

My name is William Hall. I am about 23 years of age; by occupation a laborer. I live on Swiftwater plantation. I was there in 1868, 1869, 1870, and 1871.

Witness was here referred to Exhibit 2, which was explained to him, and says:

Item of March 1st, 1869.—I assisted in cleaning out the ditches referred to; assisted Mr. Allison in measuring such as were cleaned out that year of my own knowledge. I assisted in ditching in 1870—see date June 30th, 1870—and assisted Mr. Allison in measuring, as above. I did my ditching under the same contract as Buford and Campbell. The $17.00 above referred to was for work of 1867.

Test:

his
WILLIAM + HALL.
mark.

A. McGEHEE, *Comm'r.*

Dr. N. J. W. WORTHAM, being sworn, testifies:

My name is N. J. W. Wortham; my age 55 years. I am a physician. I have lived in Washington County, Miss., since 1868. I know the Swiftwater plantation well. I am the father-in-law of William F.

326 Montgomery, one of the defendants in this case.

I do not think the Swiftwater plantation in its then condition, in 1868, could have been rented at all. It was in July, 1868, when Victor Montgomery came into actual possession of the place. From that time until the end of the year it could not have been rented at all. I endeavored, as did the members of the family, to rent the place in 1870,

but unsuccessfully. We got some little labor to work on shares, but no renters. I know of no offer for the renting of the property for that year. It was advertised in the papers for rent, but no offer was made for 1870. I think $3,600 would have been a fair rental for it for the year 1870. I should have asked that much for it, but would have taken less had it been mine. I do not think that for the year 1871 the place could have been rented for $4,000. I used every effort to get renters for it, but know of no offers for it.

Int. 1. Do you know J. C. Head, of this county, and do you know anything of his facilities for obtaining labor in 1870?

Ans. I know him. We rented him some land (Mr. Kirk and
327 myself) in 1870. He put some hands on the place, enough to have worked it. He rented about 123 acres in 1870. In 1871 I rented him 150 acres additional to the 123. This 150 acres he did not cultivate at all for want of means. He says he has broken himself by injudicious renting arrangements.

Cross-examined by Mr. Valliant:

When I tried to rent the place in 1870 I asked $6,000 for it. In 1871 I tried to rent in small patches. I fixed no definite price. My son-in-law, William F. Montgomery, would have taken $1,200 for his third for 1871.

N. J. W. WORTHAM.

C. P. HUNTINGTON, being sworn, testifies as follows:

My name is Charles P. Huntington; my age, 36. I reside in this county, near Greenville. In 1869, on 4th January, I purchased the Batchelor Bend plantation from Benjamin Roach, and have resided there up to this time from date of the purchase. I am not related to the parties in this suit, nor interested in its result.

Int. 1st. Are you acquainted with the Swiftwater plantation, in
328 this county, formerly the property of A. B. Montgomery?

Ans. I know where the place is; have passed it frequently, but am not particularly acquainted with it.

Int. 2d. What do you think would be the fair rental value of said place for the years 1869, '70, '71, and '72?

Ans. From the general reputation of the place I should say that, if rented to a person who had the responsibility of keeping it up, a rent of $5,000 or $6,000 would be a fair rent for each of the years mentioned.

Int. 3rd. What would be a fair rental value of the place renting it in parcels?

Ans. About $8.00 per acre.

Int. 4. How much cleared land have you in your Batchelor Bend plantation, and how far is it from Swiftwater plantation?

Ans. About 900 acres of cleared land. It is about 5 miles from Swiftwater.

Int. 5th. What rent could you have obtained from laborers for your place in those years—I mean the cleared land—the rent being payable in money or cotton; and, if in cotton, how much cotton per acre?

329 Ans. I think I could have gotten $8.00 per acre for it in money or 70 or 80 pounds of lint-cotton. I would say definitely $8.00 per acre in money or 80 pounds of lint-cotton per acre.

Int. 6th. Do you think you could have obtained $10.00 per acre rent for all your cleared land in 1872?

Ans. I do not think I could in money, but did in cotton get more. In 1872 I worked most of my place on shares; for the part I rented, I got

$10 per acre for some and 80 pounds of lint-cotton per acre for the balance. If I could rent my whole place to men who had their own stock, at $10 per acre, I would prefer doing so to working it on the usual contracts of the country.

Int. 7th. What is the usual and customary price for laborers to pay for rent for good, cleared lands, in the neighborhood of Greenville for the last 3 or 4 years?

Ans. Well managed places have been receiving $10 per acre or 80 pounds of lint-cotton per acre for cleared lands for the last 3 or 4 years.

Int. 8th. What has been the average price of cotton for the
330 last 3 or 4 years?

Ans. About 17 cents.

Cross-examined by Stevenson Archer, agt., &c., a witness examined this morning, at request of Mr. Montgomery:

X-int. 1st. Are you familiar with the condition of the fences, tenements, ditches, &c., of Swiftwater place?

Ans. I am not.

X-int. 2d. Were there enough tenantable houses on the place to have accommodated 30 hands in either of the years 1869, '70, '71, or '72?

Ans. I do not know.

X-int. 3d. If aware that half the tenements on the place were uninhabitable, the ditches choked up, six miles of fence out of repair, would it not modify your answer; and if so, to what extent?

Ans. I would say under such circumstances it might absorb a part or the whole of one year's rent, but I think not more.

X-int. 4th. What do you mean by the terms, "who had the re-
331 sponsibility of keeping up the place?" Do you mean the responsibility of returning the place in like condition in which it was received or to put it in thorough repair?

Ans. I mean a person who has the responsibility of returning the place in as good condition as received and making such repairs as are incidental to the making of a crop, and to the cultivation of the place as a cotton-plantation.

X-int. 5th. Are not the facilities for renting greater near Greenville or on the river than in the neighborhood of Swiftwater plantation?

Ans. I do not think there is much difference, though one would suppose there would be.

X-int. 6th. Had you withdrawn your stock and implements from your Batchelor Bend plantation, could you have rented the whole of your place for $10 per acre or 80 pounds of lint-cotton per acre, during either or all of those years?

Ans. I could have rented a large part of it, but doubt if I could have rented it all.

C. P. HUNTINGTON.

332 G. C. VAUGHT, being sworn, testifies as follows:

My name is Greenup C. Vaught; my age 31 years; am a planter and reside in this county. In 1868, '69, '70, '71, and '72, I resided on the adjoining place to Swiftwater plantation.

Int. 1st. Would you pay any rent for a plantation for that year when you only got possession in June?

Ans. I would not.

Int. 2d. Are you thoroughly familiar with Swiftwater plantation and its surroundings?

Ans. I am.

Int. 3rd. Taking into consideration its condition, and the condition of the improvements on it in 1869, what do you think would have been a fair rental valuation for it for that year?

Ans. If I could have gotten it for that year only I would not have taken it at all. If, for a series of three, four, or five years, it would have probably been worth $2,000 the first year, and each successive year somewhat more as the necessary outlay for improvements became lighter.

333 Int. 4th. Do you not know that the place was rented in 1869? If so, from whom did you derive your information, and what was the nature of that information?

Ans. I heard one of the Messrs. Nugent, who rented the place, say they were to give $6,000 rent, but they had taken it for a debt they never expected to get in any other way, and whatever they could get out of the place would be that much made.

Int. 5th. Describe the condition of the place in 1870 and '71.

Ans. It was in miserable condition. On one side of the plantation there was no fence belonging to Swiftwater. The south half of the place, in 1871, was unenclosed and a common. There was over one hundred acres set in Bermuda grass, I think; at least 150 or 200 acres grown up in saplings, and about 100 acres drowned out.

Int. 6th. Did you and Col. Richardson entertain any idea of renting the place for the year 1871?

Ans. We talked about it. He went off about that time, and said he needed his labor at other places. We then thought of renting

334 some portion of the place joining the place I was then living on. This portion was offered to us at not over $3.00 per acre. I considered this the best part of the place. I, however, rented from Mr. W. P. Montgomery adjacent land for a less price, and for this reason we did not take Mr. V. Montgomery's land. I think we paid Mr. W. P. Montgomery $2.25 per acre.

Int. 7th. What was the price of cotton in the winter of 1870 and the spring of 1871?

Ans. In the winter of '70 we had some sold as low as 6 cents per pound. It was bad cotton. In the spring of '71 it commenced rising. We sold our last lot about the last of March for, I think, 7 or 8 cents per lb. It was bad cotton. One bale sold about the last of May or first of June, for, I think, something over 14 cents per lb. It was bad cotton.

Int. 8th. Did the demand for land to rent increase in 1872 in that immediate neighborhood?

Ans. No; I think not.

Int. 9th. State the fair rental value of the place for 1872.

Ans. In its then condition, not over $2,000.

335 Int. 10th. Would not a small place rent for a larger sum per acre than a large one, and much more readily?

Ans. Yes.

Int. 11th. Would not places in the immediate vicinity of Greenville rent much more readily than places as distant as Swiftwater?

Ans. It would depend upon the improvements and condition. All things being equal, it would.

Cross-examined by Mr. Valliant:

X-int. 1st. Does not the rental value of a large plantation depend somewhat upon the manager who resides on said plantation, and has not this been the case for the last 2 or 3 years?

Ans. It has to some extent, so far as I am acquainted.

G. C. VAUGHT.

J. S. McNEILEY, being sworn, testifies:

My name is John S. McNeiley; my age, 31 years; my occupation is a printer. I have lived here 3½ years. I am not related to any of the parties in this suit, nor interested in the result.

336 Int. 1st. Do you publish the Greenville Times?

Ans. I do.

Int. 2nd. Was the Swiftwater plantation advertised in your paper for rent for the years 1870, '71, and '72?

Ans. Yes; in 1870, it was advertised for two months, and one month each for the other two years.

J. S. McNEILY.

B. CAHN, being sworn, testifies:

My name is Burnham Cahn; my age, 41 years; am a merchant; reside in Greenville, Missi., and have been here since 1865.

Int. 1st. What is the usual and customary rents paid by laborers for cleared lands lying around Greenville within a radius of 8 or 10 miles, in the years 1869, '70, '71, and '72?

Ans. I cannot answer as to 1869. They have been paying from 8 to 10 dollars per acre; some 80 pounds of lint-cotton per acre, and some one-fourth of the crop. This conforms with most of the contracts I have seen for the years 1870, '71, and '72.

337 Int. 2nd. What are your facilities for ascertaining this fact?

Ans. As a merchant, I look over their contracts before making them advances. I see the contracts of my customers and many others. I make advances on the contracts mentioned above. I do not see the contracts of probably more than one-tenth of the laborers living within the distance mentioned.

Cross-examined by Mr. Montgomery:

X-int. 1st. Was there not, during the years 1870, '71, and '72 many hundreds of acres of tillable cleared land lying within the distance mentioned which were not cultivated?

Ans. Yes, there were some; a good deal.

X-int. 2d. Were there not some exceptions to the contracts as mentioned in your answer to int. 1st?

Ans. Yes, there were some. On some places, where there were neither houses or fences on the place, parties rented at four or five dollars per acre, the tenants putting up the improvements. I myself rented 200 acres in that condition, taking it for two years. I have seen

338 several contracts for larger rent, say 100 lbs. of lint-cotton per acre, but these I declined advancing to, the usual rates being 80 lbs. of lint-cotton per acre, or a fourth of the crop.

X-int. 3d. Do you know the Montgomery Swiftwater place?

Ans. I have passed it on the road. I know nothing of the improvements, but know there was no fence on the lower part, and it was lying out and uncultivated.

Re examined:

Int. 1st. Where such tillable lands as you have above mentioned were lying idle, was it not usually for want of means or bad management on the part of the owner?

Ans. I think some places I know of in this condition could have been rented wholly or in part had owners consented to take low rent.

Re-crossed:

XX int. 1st. Do you know anything of Mr. Montgomery's means or management on Swiftwater plantation?

Ans. I do not.

339 X X int. 2nd. Do you believe there was in 1870, '71, and '72, or is now, a sufficiency of labor to cultivate all the tillable land within the distance named?

Ans. I suppose there was not and is not.

Re-examined:

Int. 1st. Had you taken the Swiftwater plantation in 1868, with the large steam gin then and now on it, could you not have put labor enough on it to have cultivated?

Ans. If I had possessed plenty of money and means I could have done it in two years, but not having the means do not believe I could have done it.

Re-crossed:

X X X int. 1st. Do you believe it would have been a profitable venture to stock the place during those years and raise cotton on it?

Ans. I do not know. I know nothing about the place, or comparatively nothing—not enough to answer the question.

B. CAHN.

JULIUS I. LENGSFIELD, being sworn, testifies:

340 My name is Julius I. Lengsfield; my age, 32 years; my occupation a merchant. I reside in Greenville, and have done so for five years; not related to any of the parties in this suit, nor interested in the result.

Int. 1st. What has been the usual and customary price paid by laborers for cleared land within a radius of 8 or 10 miles of Greenville for the pas' three years, 1870, '71, and '72; I mean for rent per acre, either in cotton, for money, or portion of the crops?

Ans. It has been customary to rent land to laborers for $\frac{1}{2}$ the produce of the land in cotton and corn, the landlord furnishing mules and implements and feed for the mules. It has also been customary to rent land to the laborers for $\frac{1}{4}$ the produce of the land in cotton and corn; this $\frac{1}{4}$ being payment in fee-simple for the rent of the land. It has also been customary to rent land to laborers for 80 lbs. of lint cotton per acre for cotton and corn land, and it has also been customary to rent land to laborers for $9 to $10 per acre in currency. Any other rates of rent would be an exception to the general custom.

Cross-examined by Mr. Montgomery:

341 X-int. 1st. Do you know anything of the condition of the improvements on the Montgomery Swiftwater place during the years mentioned?

Ans. I have had business transactions with freedmen who cultivated land on Swiftwater plantation during the last 3 years, and believe that the improvements in fences and ditches were nearly worthless. I have never personally examined the improvements. The condition of the improvements would have a material bearing in the rental value of the plantation. I believe that there are instances where land has been rented as low as $5.00 per acre. The fencing is generally bad in the vicinity of this place, and in this county. The rental value of a plantation where the fencing is bad is depreciated on account of the difficulty of procuring good labor and making good crops. I do not know that, as a rule, bad fencing makes any difference in the terms of the contracts between planter and laborer.

X-int. 2d. Taking into consideration the condition of the improve-

ments on Swiftwater plantation, what would have been the fair
342 rental value for each of the years mentioned?

Ans. I cannot answer; do not know.

X-int. 3rd. Were you not offered a portion of that place for rent for the year 1872; and, if so, at what rent per acre?

Ans. Dr. Wortham, solicited me to rent a portion of Swiftwater plantation late in the spring of 1872, at what I thought to be very low terms, but not desiring to rent paid no attention to the proposition, and have forgotton the terms. Dr. Wortham represented that there were some hands on the tract of land at the time under contract.

J. I. LENGSFIELD.

A. M. KIRK, being sworn, testified as follows:

My name is Alexr. M. Kirk; my age over 40. I reside near Greenville; have lived in this county since 1847, and am a planter by occupation. I am distantly related to the Montgomerys; am not pecuniarily interested in the result of this suit.

Int. 1st. What was the condition of the improvements on Swiftwater plantation in the beginning of 1870?

344 Ans. In a very dilapidated condition; the fences in bad condition; the bridges torn up, or broken down; the ditches much filed up and not in good draining order; the cabins, many of them, seemed in a very dilapidated condition, and could not have been occupied without repairing.

Int. 2nd. Was there a good demand for land to rent in that vicinity for that year, 1870?

Ans. I think not.

Int. 3rd. The condition of the whole place considered, what would have been its fair rental value for 1870?

Ans. $4,000 would have been a big rent for it.

Int. 4th. Do you know the condition of the improvements on that place in the beginning of 1871? and, if so, state your information on that point.

Ans. On the south side of the place there were 800 or 900 acres lying idle for want of fence. On the north side I saw 50 acres or more set with Bermuda grass. I think there was but little change in the condition of the tenements from the year previous.

343 Int. 5th. Condition considered what would have been a fair rental value of the place in 1871?

Ans. I would not have made much difference in the rents for 1870 and 1871.

Int. 6. What was the price of cotton in the winter of 1870 and 1871?

Ans. I sold mine at from 13 to 14 cents per lb.; heard of some sold as low as 9 cents per pound.

Int. 7th. Did the demand for land to rent increase or decline for the year 1871?

Ans. I don't think there was much change; the demand may not have been as great; I cannot say positively.

Int. 8th. Did it increase for the year 1872 in that vicinity?

Ans. I think not.

Int. 9th. What would have been a fair rental value for the place in 1872?

Ans. In 1872 the place was in some better condition. I do not think that I would have hesitated to give $4,000 for it that year; previously I would.

Int. 10th. How long have you been intimately acquainted with Swift-

water plantation? How ma'y miles of ditches are on the place?
345 Ans. Since 1850. There is an immence amount of ditching—certainly more than 25 miles; possibly as much as 40 miles—and these ditches are eminently essential to the cultivation of the place, and their condition would materially affect the rental value of the place.

Int. 11th. How much of this place is lying out which has been previously cultivated?

Ans. I know of 400 acres on the east side of Rattlesnake Bayou; have no knowledge of the condition of the land on the west side of it.

Cross examined by Mr. Valliant:

X-int. 1st. What is the number of acres of cleared land on what is known as Swiftwater plantation?

Ans. About 1,500 acres.

X-int. 2nd. Is it not as good, acre for acre, as any land in Washington County?

Ans. I expect it is. It is a flat place and requires much more ditching than some other places I know. The soil is as good as any which has been cultivated the same length of time. A large portion
346 of it was in cultivation in 1847.

X-int. 3rd. What is the value of the gin-house and machinery on that place?

Ans. I would suppose from six to eight thousand dollars. I built my gin, nearly the same size, with saw-mill attached, for about $5,000. This includes price of engines and machinery. All the labor which could have been performed by my slaves was done by them. This labor is included in the estimated cost of the gin.

X-int. 4th. What is the present condition of the ditches and fences on Swiftwater plantation?

Ans. The fencing is improved from what it was. I cannot speak about the ditches, not having examined them. It has been two years since I went over it to observe it.

X-int. 5th. Do you think that in the beginning of 1871 the fencing and ditching was materially changed for the better or worse?

Ans. I do not think it was much changed either way.

A. M. KIRK.

347 EDWARD DRESCHOR, being sworn, testifies:

My name is Edward Dreschor. My age is 43 years. I am bricklayer, builder, and architect; have resided here not quite two months; have no interest in this suit; am not related to any of the parties.

Int. 1st. Refer to item of July 31st, 1868, and state if you have seen the work and if the price charged is unreasonable.

Ans. I have seen the work. The charge is very moderate. I should have charged $150 each cabin for the work.

Int. 2nd. See item of Feb'y 5th, 1870, and state if you have seen the work; and is the charge reasonable?

Ans. I have. The charge is very reasonable.

Int. 3rd. See item June 30th, 1870, "4 double cabins moved, all complete." State if you have seen the work; and is the charge reasonable?

Ans. I have. The charge is very reasonable.

Int. 4th. See item Sept. 3rd, 1870, "Cementing 2 cisterns, $58.00." State if you have seen the work; and is the charge reasonable?

Ans. I did not examine the work, as there was water in the cisterns. One cistern is worth the price here charged for both.

348 Int. 5th. See item Nov. 1st, 1870. State if you have seen the building; and is the price charged reasonable?

Ans. I have. It is.

Int. 6th. See item March 30th, 1871. State have you seen the building; and is the charge reasonable?

Ans. I have. The charge is reasonable.

Int. 7th. See items of May 3rd and July 31st, of 1871. Have you seen the fence? Is the price charged reasonable?

Ans. I have. It is.

Int. 8th. See item Dec. 22d, 1871, "5 houses, containing six rooms, built of new material, on swamp field, at $150 per room." Have you seen these houses, and is the charge reasonable?

Ans. Yes. It is.

Int. 9th. See item Dec. 22d, 1871, "Two cribs, 1 cotton-house and stable, of new material." State if you have seen these houses and if the charge is reasonable?

Ans. I have. The charge is reasonable.

Int. 10th. Item of same date, "1 double cabin moved, all complete, (Carter's.") Have you seen the house? Is the charge reasonable?

Ans. Yes. It is.

349 Int. 11th. Item, same date, "2 wells dug and curbed up." Have you seen the work, and is the charge reasonable?

Ans. Yes. It is.

Int. 12th. See items of Jan'y 22d and Febr'y 22d of 1872. State have you seen those houses? Is the charge made reasonable?

Ans. I have. It is.

Int. 13th. See item Nov. 3rd, 1872, "Dwelling with 4 rooms, all new material." State if you have seen the building, and if the price charged is reasonable.

Ans. Yes. It is.

Int. 14th. Item of same date, "To servant's house, kitchen, crib, stable, sheds, well with curbing, hen-house, gates, lots, &c., $1,000." Have you seen all these improvements, and is charge reasonable?

Ans. I have. It is.

Int. 15th. See item of Dec. 30th, 1872, "1 single cabin moved, all complete." Have you seen the building, and is the charge made reasonable?

Ans. I have. It is.

Int. 16th. Item of same date, "3 double cabins moved, all complete," $250 each cabin. Have you seen this work, and is the charge made reasonable?

350 Ans. I have seen 2 of the cabins; the other is not yet complete, but in course of erection. I think the charge of $250 for each cabin is reasonable.

Int. 17th. Item of same date, "Repairing brick kitchen and single chimney." Did you do this work? Is the charge reasonable?

Ans. I did. It is reasonable.

Cross-examined by Mr. Valliant.

X-int. 1st. Are you a citizen of the United States?

Ans. No; I am a Prussian.

X-int. 2nd. How long since you left Prussia?

Ans. Since 1855.

X-int. 3rd. Where have you resided since, in each place?

Ans. I first went to Sweden; remained there one year; then to Norway; remained there 1½ years; then to Melbourne, in Australia; re-

mained there 2 years; from Melbourne went to the East Indies; remained there but a short time; from the East Indies went back to Europe, first to Germany; remained a very short time and went thence to Norway, where I remained until 1866, in the spring. Went then from Norway to England; thence to New York, where I arrived July 3rd, 1866. I
351 remained but a few days in New York and went thence to Ohio; remained there until the fall of the same year, and came to Vicksburg, Miss., on the 16th Dec., 1866; remained in Vicksburg until within nearly two months of the present time.

X-int. 4th. Do you know what it cost Mr. Montgomery to remove the cabins referred to in item of July 31st, 1868?

Ans. I do not.

X-int. 5th. Do you know the customary price in this county in 1868 for removing and putting up such work?

Ans. The labor for putting up the frame-work, exclusive of material, is $50, mechanics' prices. The brick-work on chimneys, for single cabin, all material furnished, is about $40.00; for a double cabin, $50.00.

X-int. 6th. Do you know what would be the price of new brick, lime, and mortar sufficient to put up a new chimney for a single cabin, in this county?

Ans. I do. Brick are worth $20 per thousand, the necessary mortar between $7 and 8 dollars; the labor of putting them up is worth $14.00 or $15.00.

X-int. 7th. Of what material are the cabins referred to in item
352 of July 31st, 1868, composed?

Ans. The frame-work was put up principally of sawed logs.

X-int. 8th. How long would it take two men to take down, remove, and put up one such cabin?

Ans. It would require between two and three weeks; I would say three weeks.

X-int. 10th. See item referred to in int. 2d, and state, if you know, of what material those cabins are made.

Ans. The frame is made of sawed logs and the roof of 3 foot boards.

X-int. 11th. See item referred to in int. 3, and state as before.

Ans. Of the same material.

X-int. 12th. See item referred to in int. 5, and state of what material it is composed, and what is its value as it now stands?

Ans. Of same material as above; it is worth between $325 and $350.

X-int. 13th. See item referred to in int. 6th, and state what you think the house worth as it stands.

Ans. It is composed of same material as above, and is worth $400.00

X-int. 14th. Of what material are the 5 houses mentioned in
353 int. 8th composed?

Ans. Of sawed cypress lumber, and covered with 3-foot boards.

X-int. 15th. See item referred to in int. 9th, and state of what material they are composed?

Ans. Same as above.

X-int. 16th. Of what material is the house referred to in int. 11th composed?

Ans. Of sawed logs, covered with 3-foot boards, and is worth from $350 to 375 dollars.

X-int. 17th. Of what are the buildings composed, which are mentioned in int. 12th?

Ans. Of same material.

X-int. 18th. Describe the dwelling-house mentioned in int. 13th, giving

the number of rooms, the kind of material of which it is composed, and the size of the rooms?

Ans. The two main rooms are 16 x 48, the two shed rooms attached are 12 x 16; a passage through 10 feet wide, a gallery in front 8 feet wide, a chimney between each main and shed room; the outside walls composed of rough cypress plank nailed on up and down, with strips to break the joints; the main rooms and hall floored with drest pine
354 lumber tongued and grooved; the floors of the shed-rooms and gallery of rough lumber; the main rooms ceiled overhead with rough lumber, and the walls and ceiling covered with building-paper. The front windows reach the floor, with venetian shutters; 3 panelled doors; 2 battened doors; weight windows.

Int. 19th. Describe the houses referred to in int. 14?

Ans. The servant's house is composed of sawed cypress lumber, built as the dwelling-house; contains 3 rooms. The entire body of the house is 32½ feet long by 15 feet wide, floored with rough cypress-plank; no gallery in front; only one chimney; covered with 3-foot boards; no ceiling overhead. The crib is built of hewed cypress logs, with shed on each side for a stable, which would accommodate 8 horses on a side. The crib is floored, the stable is not. The size of the crib I suppose is 16 x 18 x 12 feet clear. The crib is built of old cypress logs, perfectly sound and seasoned, which were removed and put up there. The logs are large, sound, and seasoned. The stable is new.

355 SAMUEL L. FOWLE, being sworn, testifies:

My name is Samuel L. Fowle; my age 27 years. I am a contractor and builder. I reside in Greenville; came here in 1869, and have lived here ever since. I am not related to any of the parties in this suit nor interested in its result.

Int. 1st. Refer to Exhibit No. 2, item of July 31st, 1868, and after reading description of the cabins by witness Allison, say whether the charge made is exorbitant?

Ans. I think the price very reasonable, and for all similar work this price would be very reasonable. I have done much of it.

Int. 2nd. Refer to item of Dec. 22d, 1871; "5 houses containing 6 rooms, built of new material on swamp field at $150 per room, $900.00;" "2 cribs, 1 cotton-house and stable of new material, $175.00;" and "one double cabin moved, all complete," at $250; and state if the amount charged is reasonable.

Ans. After hearing description of the buildings, I consider the amount charged exceedingly moderate.

Int. 3rd. Read the description of the house in ans. to int. 18th
356 of the deposition of Dreschor, and state what you would duplicate such a house for?

Ans. $1,900.00.

Up to date.

S. L. FOWLE.

Mr. Valliant declines to cross-examine on account of the condition of the witness. He was very drunk.

A. McGEHEE, *Commr.*

SAMUEL W. MONTGOMERY, being sworn, testified as follows:

My name is Samuel W. Montgomery. My age is 24 years. I am a farmer by occupation; reside in Washington County, adjoining the

Swiftwater plantation; am a cousin of Victor, William F., and Davidella Montgomery, but not in any degree interested in the result of this suit.

Int. 1st. Do you remember at what time in 1868, Mr. Victor, William F., and Davidella Montgomery came into possession of the Swiftwater plantation?

Ans. I cannot state the definite time.

Int. 2nd. What would have been the rental value of the place for that year, coming into possession when they did?

357 Ans. Nothing at all. I would have had to be paid to take it.

Int. 3rd. Do you consider the rent paid for the place in 1869 excessive?

Ans. I do.

Int. 4th. What do you consider would have been a fair rental value for the place, in its then condition, in 1869?

Ans. $3,500.00.

Int. 5th. What was the fair rental value of Swiftwater plantation in 1870?

Ans. About $4,000.00, and do not think it could have been rented for that sum.

Int. 6th. I do not remember seeing a single applicant for lands. I know the place was advertised, and that the holders were willing to rent at almost any figures. Almost every one in the county was then anxious to get away from it on account of the difficulty of procuring and keeping laborers. I am conversant with the place and its surroundings. In 1871 there was no fencing of any value on the south side, which embraces rather more than one-half the place. It lay out as a common; on the other half the fencing was miserably deficient.

358 I think there were 20 cabins on the whole place which were tenantable; some of them very indifferent.

Int. 7th. Was not some portion of the Swiftwater plantation offered to you for rent in the year 1872; if so, for what price?

Ans. Yes; for $2.50 and $3.00 per acre; this was for the best land, and under the best fence of any on the place. I declined, because I could not get the labor to work it.

Int. 8th. What was the fair rental valuation for Swiftwater plantation in 1872?

Ans. Not exceeding $5,000.00.

Int. 9th. How much of this land (cleared land) do you suppose is, from Bermuda grass and other causes, not tillable?

Ans. About 500 acres.

S. W. MONTGOMERY.

Cross-examined by Mr. Valliant: Waived.

At the same time and place came STEVENSON ARCHER, who, being sworn, testified:

My name is Stevenson Archer; my age, 34 years. Occupation, preacher, planter, and merchant; reside in Washington County,

359 Mississippi; not related to any of the parties in this suit, nor interested in its result; am familiar with Swiftwater plantation; my own plantation adjoins it. I resided in 1868 and part of 1869 on my father's place, near my own place.

Int. 1st. What do you consider would have been a fair rental value of Swiftwater plantation in 1868, from the time the Montgomerys came into possession until the end of the year?

Ans. Value merely nominal. I should not have valued it at more than $2,000 for that entire year.

Int. 2d. What would have been the fair rental value of the place for 1869?

Ans. Not over $4,000.00.

Int. 3d. Were you or not authorized by Victor and W. F. Montgomery to rent the place, or procure a renter or tenant, for the year 1870?

Ans. I was; and got W. R. Trigg and J. B. M. Lawson, who desired to rent, to go and see it. They declined renting it on account of the Bermuda grass, and lack of tenements and fencing; this was the reasons they gave.

360 Int. 4th. What was the condition of the place in 1870? State of your own knowledge.

Ans. At least half of the cabins were untenantable; the fence hopelessly wrecked and rotten; the ditches choked up, and bridges across them nearly all down; about 200 acres of the land grown up in saplings and briars, and at least 200 acres set with Bermuda; the stables in a dilapidated condition, and the machinery at the gin-house in bad repair. There are 15 miles of ditching on the south side part of the plantation, and not less than ten miles on the north side.

Int. 5th. What would have been the rental value of the place in 1870?

Ans. Not in excess of that of 1869, if equal to it; say, not more than $4,000, if even so much.

Int. 6th. Was the place in 1871 again placed in your hands for rent?

Ans. Yes.

Int. 7th. What was the highest rent offered you for that year?

Ans. At one time Mr. Richardson agreed to take it at $3,000, but subsequently declined it at that price. Subsequently Mr. V.

361 Montgomery offered me the south side of the place for that year, if I would take it and fence it. Doubting my ability to procure labor, I declined it. Cotton at this time was as low as 7 cents per pound in New Orleans. I considered Mr. Richardson's offer of $3,000 a fair rental value of the place for that year.

Int. 8th. Was there any increased demand for land in 1872?

Ans. I think a slight increase.

Int. 9th. What was a fair rental value of the place in 1872?

Ans. In view of the fact that there considerable improvement in the tenements and fencing, I would say $5,000.

Int. 10th. Is Swiftwater a flat or rolling place, and is the ditching spoken of essential to it?

Ans. A flat place, with but one natural drain, and the ditches are eminently essential to the making of a good crop on it.

Int. 11th. Examine the items of Exhibit No. 2, and state whether the work was done, and whether the price charged is just or excessive?

Ans. Item of July 31st, 1868, all right; work done and charge

362 reasonable. Item 25 Aug., 1868; I know nothing of this particular work. I paid an Irishman $2.00 per rod to clean out a ditch of same dimensions. He took out one spade depth of dirt, and cleaned out the logs and saplings. Item of Sept. 23d, 1869, and of June 30th, 1870; I paid $1.25 per foot, and furnished the labor for driving similar wells. Item of March 20th, 1871, one double-cabin, Peter's; I consider charge as correct. Item, July 31st, 1871, plank fence; know the work was done, and think the charge reasonable.

Int. 8th. Refer to item June 30th, 1872, and state whether or not, in your opinion, the charge is unreasonable.

Ans. It is not. I paid $6.00 per acre for such work.

Int. 9th. What do you know of item, Dec. 22d, 1871, 20,000 new rails put on fence?

Ans. I know of at least 15,000. I consider from $40 to $50 per M a fair price for making, hauling, and putting up the same.

Int. 10th. Have you not been paying taxes for other parties in this county, and at what discount did you pay those taxes in 1869 and 1870?

363 Ans. I have. In 1839 and 1870, I averaged the taxes, and paid them at 80c. on the dollar, and charged 2½ per ct. commissions. I had a real-estate broker's license. In 1871 and 1872, the discount would not average over 10 per ct. It varied much.

Cross-examined by Mr. Valliant:

X-int. 1st. In answer to int. 3rd, you state that you were authorized by Victor and W. F. Montgomery to rent the place, or procure a renter for 1870. What was the price they authorized you to rent it at?

Ans. They stipulated no price. I had to refer parties to them as to terms.

X-int. 2d. You state in int. 6, *you state* the place was again placed in your hands in 1871. What was the price fixed for the rent that year?

Ans. I was simply instructed to offer it for rent; had no authority to close a contract at any price.

X-int. 3d. At what time of year, in 1871, did you offer the place to Richardson?

Ans. In January.

X-int. 4th. How many plantations did Mr. Richardson own in

364 1871, in the Missi. Valley, between Vicksburg and Memphis?

Ans. I know of nine.

X-int. 5th. At what time of the year 1871 did Mr. V. Montgomery offer you the south side of Swiftwater place for rent?

Ans. In March.

X-int. 6th. What kind of rails were the 1,500 you refer to?

Ans. At least 10,000 were oak.

X-int. 7th. What is the usual price here for splitting rails?

Ans. From $1.50 to $2.00 per hundred.

X-int. 8th. What is the quality of the other rails referred to?

Ans. They were split poles out of willow and cypress. I think made out of trees from 10 to 15 inches diameter; about 500 of the rails were of this character.

Re-examined.

Was not Mr. Richardson a man of large means, and investing in renting places, raising cotton, and did he not have control of the penitentiary hands at the time you offered him the place?

Ans. Yes.

STEVENSON ARCHER

365 N. B. JOHNSON, being sworn, testifies:

My name is Nicholas B. Johnson; my age, 41 years; I am a resident of Greenville. I have lived here since 1858. I am not related to either of the parties to this suit, nor interested in its result.

Int. 1st. Refer to item of Nov. 3rd, 1872: "Dwelling-house containing 4 rooms;" and after hearing description of the same as given by Witness Dreschor, state its value.

(Witness here referred to Ex. No. 2.)

Ans. At least $2,250, which is a low price for it. I predicate this statement from my familiarity with such work as a builder and contractor; and also state that I made an estimate with a view to taking

the contract; but Mr. Montgomery and myself split on the item of hauling.

N. B. JOHNSON.

Cross-examination waived.

J. WESLEY HUGHES, being sworn, testifies:

My name is John Wesley Hughes; my age, 44 years; am a
366 merchant, trader, and planter; resided formerly in this county; am not related to either party in this suit, nor interested in its result.

Int. 1st. Do you know the Montgomery Swiftwater plantation? If so, state your means of information, and give a full description of the improvements on that place during the years 1868 and 1869.

Ans. I do. I have ridden over it hundreds of times from 1864 to 1872. I cultivated the place in 1866, working thereon 135 to 145 hands. In 1868 and 1869 there were cabins for 75 or 100 hands in bad repair; a steam-gin also in bad repair; stables in the same condition; ditches and fences in miserable condition; the dwelling-house a good one; a large portion of the place heavily sodded with Bermuda, which rendered it almost unfit for profitable cultivation; from 100 to 150 acres of the previously-cleared land grown up in saplings, and unfit for cultivation. On the west side of Rattlesnake Bayou there were 80 acres so sodded with Bermuda grass as to be valueless for cultivation,
367 and beyond that a larger space, say 150 acres, in somewhat similar condition, and all without fence.

Int. 2nd. State, if you can, the number of miles of ditches on said place, and whether the same are essentially necessary to the successful cultivation of the place.

Ans. I cannot state with certainty, but would say there are from 20 to 25 miles of ditching on the place; possibly more. I examined them pretty thoroughly in 1866, while cultivating the place, and speak advisedly. These ditches are absolutely essential to the proper cultivation of the place.

Int. 3rd. Having cultivated the place in 1866, state what you know of the productiveness of its soil as compared with other places in its vicinity.

Ans. I have cultivated it and other places in Washington County, and found it in same seasons inferior to any other place I have worked in the county. I do not regard the land as first-class cotton or corn land, by any means.

Int. 4th. How often were you on the place in 1869?

Ans. Three or four times during the spring, summer, and fall.

368 Int. 5th. What would have been the fair rental value of the place for 1869, taking into consideration the condition of the fences, ditches, cabins, machinery, &c., at that time?

Ans. I do not think that any man could have afforded to have put the place in repair for its use for that year free of rent. I do not think the place was worth any rent in its then condition.

Int. 6th. How often were you on the place in 1870?

Ans. 2 or 3 times.

Int. 7th. What would have been its fair rental value in its then condition in 1870 for that year?

Ans. The place was still in bad condition. I think $1,000 would have been a full price.

Int. 8th. How often did you see the place in 1871?

Ans. 2 or 3 times.

Int. 9th. What would have been its fair rental value for each year, 1871 and 1872?

Ans. I looked at the place with some interest as having been the scene of my former operations, and did not think its condition much, if any, improved. I thought it would have been a hard bargain
369 at $1,000 or $1,500 rent. I knew other planters to have examined it with a view to renting, whose estimate of its rental value was quite as low as I have stated.

Int. 10. Do you know of any man of sufficient means to have cultivated the entire Swiftwater place and desiring to rent such a place during any one of the years 1868, 1869, 1870, 1871, and 1872?

Ans. I do not. I think a man would have had to look far for such a man.

Int. 11. What do you think it would have cost to put the entire place in cultivation during any one of the above-mentioned years?

Ans. It cost me $44,000 to attempt to stock and cultivate it in 1866, and then it was not all in cultivation or done to my satisfaction, although it was in better condition that year than it has been since. I cannot say with certainty what it would have cost during either of the years mentioned. I used every reasonable economy in working it myself.

Cross-examined by Mr. F. Valliant:

370 X-int. 1st. How many years were you engaged in planting in Washington County?

Ans. 3 years, 1864, '5, and '6.

X-int. 2nd. Where have you resided since 1866?

Ans. Indiana has been my voting-place. I have spent almost the entire time in travelling through the Southern States as commercial agent.

X-int. 3rd. During the time you cultivated Swiftwater was any one interested with you as partner; if yea, whom?

Ans. Yes. Mr. A. B. Montgomery, Mr. J. Woodson Hughes, and Isaac W. Smith.

X-int. 4. Where do you now reside?

Ans. At Evansville, Indiana, when at home.

X-int. 5. How long have you been in this county on this visit?

Ans. 1 day

X-int. 6th. When do you expect to leave this county?

Ans. On the first boat down.

J. WESLEY HUGHES.

VICTOR MONTGOMERY, being sworn, testifies:

My name is Victor Montgomery; my age, 26 years; am a planter; have resided on Swiftwater plantation since July 5th, 1868,
371 and am one of the defendants in this suit. In reference to the account filed, marked "Exhibit No. 2," I would state the items there charged, of my own knowledge, are true and just. Some have been charged upon the information of witnesses, to whose testimony reference is here made, which I believe true and just. The prices fixed to nearly all the items are based upon the opinion of parties, some of whom assisted in doing the work, others examined the work as done, in order to ascertain its value, and reference is here made to the testimony of witnesses Dreschor, Allison, and N. B. Johnson. As to the items of taxes, as set forth in supplement to Exhibit No. 2, I have my vouchers, h I here tender you as proof of their payment by my brother, sister,

and myself. In regard to the fifty per cent. damages per annum claimed, I would refer you to the law upon that subject. (See acts of 1867, chapt. clxxiii, sec. 3, and act of Dec. 2d, 1858, chapt. 1, sec. 7.) In reference to our ownership of the entire Bosley debt, I would say, when
372 Capt. W. L. Nugent and myself approached Bosley's agent and attorney for the purpose of buying Swiftwater, they informed us of Mr. Bosley's unwillingness to part with the place for less than his entire mortgage debt. We proposed to purchase by paying part down and the balance on time. After considerable parleying, an agreement was entered into between W. L. Nugent, as my attorney, and Mr. Reid, as Bosley's attorney. Captain Nugent informed me that this was an assignment from Bosley to us of his entire mortgage debt against Swiftwater, with an agreement, upon Bosley's part, to convey the land to my brother, sister, and myself, upon the payment of $15,000.00, cash, within 30 days, which payment was made by me on the 30th day of June, 1868. I accompanied the commissioner to take Mr. Bosley's acknowledgement to the deed. Mr. Bosley said to me, after he had signed the deed, "Well, Vic., if I had died while I owned Swiftwater, you children would *not* have been left homeless and penniless." I do not remember to have seen the assignment or agreement but once, and was then requested by Mr. Reid to copy it, and enclose copy to Capt.
373 Nugent. Mr. Reid made the copy himself, and I enclosed it to Capt. Nugent. I have looked without success for the copy in the place where Capt. Nugent thought he had left it. I have written two letters to Gov. Neil S. Brown, who is a partner of Mr. Reid in the practice of law, and with whom I am well acquainted, requesting and urging him in each letter to send the original agreement or a certified copy of it. I have not yet received any answer to those letters. The postmaster here informs me that the regular mails have been obstructed since 15th Dec., 1872. I do not know where the articles of agreement are. I have never destroyed it nor its copy, but, upon the contrary, have used every effort in my power to obtain one or the other, and produce it in evidence before the commissioner. I was informed by my counsel at the date of the agreement to purchase Swiftwater, that I would obtain under that agreement from Bosley a deed to the land, together with an assignment of his entire mortgage debt. I believed then that we were the owners of Bosley's entire mortgage debt. We have been
374 in possession of Swiftwater four years, and there is not a shadow of a doubt in my mind to day but that we are the owners of the entire Bosley debt against the Swiftwater place. I here desire to state that a large portion of the original purchase-money paid by me to Bosley is due from me to the parties from whom I borrowed the same in order to make the purchase. The sums remaining due and unpaid are as follows, to wit: The balance due on my note to Robard Allison is $7,903.30. My mother, Davidella Montgomery, holds our (my sister, brother, and self) individual notes for $1,400.00 each, making $4,200.00 upon which no payments have been made, except the annual interest as it fell due. The note to Robard Allison and those to Mrs. Davidella Montgomery are secured by mortgage from us (my brother, sister, and self) upon the Swiftwater place, as described in the deed from Bosley to me, and I would here ask of the court that they set out in the final decree in this cause that the sums above mentioned are due to the parties as here stated, and not to my brother, sister, and self.

Cross-examined:

375 X-int. 1st. Refer to each item of Exhibit No. 2, and state the precise amount in cash paid by you for the same.

(Objected to by Mr. Montgomery as irrelevant, since the decree requires the valuation and not actual cost of each item.)

Ans. Item June 2d, 1868, "Land-tax." I refer to Exhibit No. 4, herewith filed, and would state that I paid the same as there shown. Item July 31st, '68, "Moving 3 single cabins." The work was done by plantation laborers, who were under contract with me. Do not remember how much was paid out in cash. It is the universal custom of laborers to demand compensation for all work done by them on the plantation outside of the usual crop routine. The price charged *charged* is reasonable. This answer will apply to items of Aug. 1st, and 25th, 1868. As to item of Nov. 20th, '69, I paid $1.25 or $1.50 per hundred for the mere spliting the rails, boarding the laborers, furnishing the tools, &c. I had the rails hauled and put on the fence. The charge is reasonable. As to items Feb'y 3rd, 1869, do not remember. It was done by laborers under contract with me; the prices charged are reasonable. Item
376 March 1st, 1869. Done by plantation laborers. Item July 3rd, 1869. Refer to Exhibit No. 5; paid the amount there shown. Item Aug. 12th, 1869. Refer to Exh. 6, and answer as above. Item Sept. 1st, 1869. I believe the rails, as charged, were put on the fence about that time. Do not remember the cash paid out, but they were worth from $40 to $50 per thousand. In reference to items of Sept. 23rd, and Dec. 1st, 1869, I would state I have no personal knowledge of these items, the place being in possession of W. L. Nugent that year, and I refer to the deposition of Henry Buford already taken and to W. L. Nugent's yet to be taken. Item of Feb'y 5th, 1870. The work was done by plantation laborers; do not remember the amount paid out. The charge is moderate. Item of March 12th, 1870. I refer to Ex. 7, and would state that my brother, sister, and self paid the same as there shown. Item April 29th, 1870. Refer to Ex. No. 8. Same answer as above. Items of June 30th, 1870. The work, with the exception of the well, was done with plantation labor. Do not remember cash paid out. The well-driver charges from $1.25 to $1.50 per foot, and told me the well
377 was 85 feet deep. These charges are fair. Items Sept. 3rd, 1870. The boiler was patched by myself and a gentleman who had done such work before and was staying with me at that time. We were assisted by a blacksmith we had employed by the year and another employed for that occasion, both of whom had done such work before. Mr. Reading, the machinist, who examined the work with a view to doing the same, proffered to patch the boiler for $240.00. The gibbs I purchased for $7.59, had them dressed and drilled, which I think was worth $2.50. The follower-block was made by myself and laborers I had employed. Same answer as to the other items of this date. I consider the charges reasonable. Item Nov. 1st. The item here charged was done by laborers in my employ, and the price charged was based upon Mr. Allison's opinion of its value. I think the charge too much, and think $150 a proper charge. Item Nov. 20th, 1870. 5,000 new rails, &c. I believe these rails were put on the fence about that time, and were worth from 40 to 50 dollars per thousand. Labor performed by plantation hands.
378 Do not remember amount paid out. In reference to item of same date, Rothwell judgment, refer to Exhibit No. 9, filed herewith and state that I paid the same upon the advice of my counsel, after litigating it 2 years. Item of Feb'y 28th, 1871. Refer to Exh. No. 10, filed herewith, paid by myself, brother, and sister. Item March 30th, 1871. Work done by plantation laborers. Can't say how much paid out; price reasonable. Item April 5th, 1871. Refers to Ex. No. 11; filed; paid by my brother, sister, and self. Item May 3rd, 1871. Work per-

formed mostly by myself and brother; charge is reasonable. Item June 13th, 1871. Done by workmen hired for that specific job, I boarding them and furnishing everything. Do not remember amount paid. The charge is reasonable. Item Dec. 1st, 1871. Refer to Ex. No. 13; filed; paid by my brother, sister, and self. Items of Dec. 22d, 1871. As to rails, I counted somewhat over 10,000 oak rails, for the mere splitting of which I paid $1.50 per hundred, parties boarding themselves. I also counted over 3,000 cotton-wood, willow, and cypress rails, paying, I think, about same rates for them. The balance of these rails I am sat-
379 isfied were put on the fences about that time. These (the balance referred to) were split by plantation labor. I do not remember the amount paid in cash. I had the rails hauled and put on the fence; think the oak rails worth $50 per thousand, the others worth $40 per thousand. The next item, 5 houses, &c. I assisted myself in building two of these houses. The others were built by plantation laborers; the remaining items of this date were done by plantation laborers. I think the charges fair. Item Dec. 30th. Shortly after the house was finished it was knocked down by a tree blown on it by a whirlwind, the crib blown over at same time. I had to put the house up from the foundation. Had to straighten up the crib by block and tackle, and repair both generally. The charge made is reasonable. Items Jan'y 22d, and Feb'y 22d, 1872. Work done by plantation laborers, assisted by me; price a reasonable one. Item April 6th, 1872. Refers to Ex. No. 14; filed; paid by my brother, sister, and self. Item April 30th, 1872. Refers to Ex. No. 15; filed; paid by my brother, sister, and self.
380 Item June 30th, 1872. Work done by plantation laborers under contract. The land was badly grown up in briars and bushes. It is now in cultivation; price reasonable. Item Oct. 28th, 1872. Done by hired labor; don't know its cost; price reasonable. Items of Nov. 3rd, 1873. The dwelling was built as charged. As to its value, refers to depositions of Dreschor and Johnson. The lumber was purchased from N. B. Johnson & Co.; hauled about 15 miles. The labor was done by a regular mechanic, who charged us $150 for his part of the work, we boarding him. Other items of this date done in part by hired, part by plantation labor. Can't say how much we paid out. The price affixed is based upon the opinion of Witness Dreschor. Item Dec'r 2d, 1872. Refers to Ex. No. 16; filed; paid by myself, brother, and sister. Items Dec. 30th, 1872. One single cabin; work done by hired labor; do not know the amount paid; price reasonable. Item: "3 double cabins." One of these cabins is complete; the other two in course of construction, nearly complete. Work done as above. When completed, the price
381 charged will be reasonable. Item: "New foundation to cotton-press; new pinion." I assisted in doing the work on the foundation; had a carpenter employed at $2.50 per day and board. Do not know the amount paid out. The charge is just. The pinion I paid $50 for, as per receipt here filed, marked "Exh. No. 17." The last two items of this account done by hired labor. Do not know the amount paid out. Predicate the price upon the opinion of Dreschor, witness heretofore examined.

X-int. 2nd. Did you pay the taxes alluded to in actual currency, dollar for dollar, or did you get any discount on scrip, &c.? And, if so state what prices you paid for the scrip used.

Ans. The taxes were not paid in currency, dollar for dollar. I obtained scrip on the best terms I could. The rates of discount I cannot state, but would refer to Exhibits Nos. 10 and 18 as the only data in my possession giving any data for information on that subject.

VICTOR MONTGOMERY.

Recalled and re-examined:

Int. 1st. Did you not offer a large portion of Swiftwater place
382 to J. C. Head for rent in the year 1870, and did he not decline it?

Ans. Yes; he stated he had rented as much land as he could stock with laborers that year.

VICTOR MONTGOMERY.

Mr. Montgomery here objects to the testimony of J. C. Head and E. Bourges becoming a portion of this record upon the ground that he had no notice of the taking of said depositions, and has had no opportunity to cross-examine them.

A. McGEHEE, *Commr.*

(Endorsed:) Exhibit M, filed with report May 20th, 1873. G. T. Swann, clk.

The following exhibits, numbered from one to eighteen inclusive, were filed with the foregoing report and Exhibit M, to wit:

EXHIBIT No. 1, BEING PROTEST AND AFFIDAVITS.

Protest.

CANAL AND BANKING CO. ET AL.
vs.
A. B. MONTGOMERY ET AL. } No.

To Capt. ARCHY McGEHEE, *Commissioner:*

You are hereby notified that the depositions in the above-enti-
383 tled cause are being taken without any notice to me and against my consent; that the time appointed for the taking of depositions in said cause was Saturday, January 18th, 1873. On that day Mr. James R. Yerger, a member of the firm of Nugent and Yerger, solicitors for me in said cause, was present, with my witnesses, to represent my interest; that owing to your failure to be present on that day Mr. Yerger left for Jackson, stating as late as Sunday evening that if you even came at that time that he would remain and attend to the taking of said proof; that on the appointed day (Saturday) Mr. Yerger and myself made diligent *and* inquiry for you, and that you were not in this county, but that you were on that day in Bolivar County, some thirty miles from the place appointed to take said depositions. I am informed and believe that W. L. Nugent, my senior counsel, will be in Greenville one day this week. For the above reasons, I now solemnly protest against any further pro-
ceedings being taken by you until reasonable notice be given me
384 as provided by the decree herein, that I may notify and have my counsel present.

VICTOR MONTGOMERY.

SWIFTWATER, *January 22nd*, 1873.

Overruled and examination proceeded with.

A. McGEHEE, *Commr.*

Filed with commissioner January 22d, 1873.

A. McGEHEE, *Commr.*

Affidavit of Victor Montgomery.

STATE OF MISSISSIPPI,
Washington County:

Personally appeared before me, Archy McGehee, United States commissioner, Victor Montgomery, who, being duly sworn, says that on Friday night, the 17th day of January, 1873, I was handed a note from Stevenson Archer, which informed me that J. R. Yerger, Archy McGehee, and Mr. Valliant would be at my house, which is on the Swiftwater place, on the next day, which was Saturday the 18th, to take and state an account as directed in the decree rendered Nov., 1872, in the case of Canal and Banking Co. et al. vs. A. B. Montgomery et al.; that, acting upon that information, affiant assembled his witnesses and
385 held himself in readiness to begin the taking of said depositions at that place and on that day. Affiant further states that on the succeeding day (Sunday the 19th) he came to town, saw J. R. Yerger at the wharf-boat, who told him, he (Yerger) was compelled to return to Jackson on the steamer Belle Lee, which was then landing, unless Capt. McGehee came on her. When we found Capt. McGehee was not on the boat, affiant requested Mr. Yerger to remain for a few days, and attend to the taking of said depositions. He replied: "Capt. McGehee appointed Saturday, the 18th of January, 1873, to commence taking the depositions. I was here at the appointed time, and after diligent inquiry, could not find Capt. McGehee; I understand he has gone to Bolivar County; there is "no certainty when he will return, and I cannot stay any longer."

VICTOR MONTGOMERY.

Sworn to and subscribed before me this 25th day of January, A. D. 1873.

ARCHY McGEHEE,
U. S. Commr.

Filed January 25th, 1873.

A. McGEHEE,
U. S. Commr.

386 *Affidavit of Wm. G. Yerger.*

STATE OF MISSISSIPPI,
Washington County:

Personally appeared before me, Archy McGehee, United States commissioner, William G. Yerger, who, being duly sworn, states that on Saturday, the 18th day of January, 1873, James R. Yerger was in the town of Greenville, county and State aforesaid; that said Yerger stated to affiant that he was then in said town that day for the purpose of attending the taking of depositions in case of the Canal and Banking Co. vs. Victor Montgomery et al., as by agreement with Archy McGehee. Affiant further states that on the succeeding day, (Sunday the 19th,) on board the steamer Belle Lee, said Yerger said to affiant: "You see Arch McGehee still is not here; did not come by the boat, and so I am going home; were he here now I should remain and take the depositions as he is already up; the time appointed for taking said depositions having passed, I shall leave."

WM. G. YERGER.

Sworn to and subscribed before me this 25th day of January, A. D. 1873.

ARCHY McGEHEE,
U. S. Commr.

Filed Jan'y 25th, 1873.

A. McGEHEE, *Commr.*

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EXHIBIT No. 2.

DR. *Swiftwater Plantation in acc. with V., D., and W. F. Montgomery,* DR.

			Amounts.	Interest.
1868.		Interest at 8 % per annum up to Nov. 21st, 1872:		
June	2	To land-tax paid sheriff, (see voucher)	$292 69	
July	31	" moving 3 single cabins to orchard, @ 125	375 00	
Aug.	1	" repairs and additions to stable for mules	100 00	
	25	" cleaning out 260 rods of 6×8 ft. ditch	520 00	
Nov.	20	" 1,500 new rails put on fence, @ $50 pr. M	75 00	
1869.		1869.		
Febr'y	3d	" moving and converting crib into a house of 4 rooms with entry, sheds, &c., complete	300 00	
		" 2 cabins, 200, 1 crib 50, stable 50, and cotton-house 75, built of new material, at orchard	375 00	
M'ch	1	" cleaning out 1,312½ rods of ditching, @ 1	1, 312 50	
July	2	" tax title from liquidating levee board 132.20, sold to with damages at 50% per annum		
Aug.	12	" redemption of land from 10c levee board 721.45, sold May 7, 1868, with damages @ 50% per annum		
Sept.	1	" 10,000 new rails put on fence, @ 50c. per m	500 00	
	23	" driven well 72 ft. 08, and labor to sink same, 2	110 00	
Dec.	1	" patching boiler & repairs to machinery & gin-house	500 00	
1870.		1870.		
Feb'y	5	" 2 single cabins moved, all complete, W. & R	250 00	
M'rch	12	" bridge-tax paid on land, 51.04, with damages 50 % per annum from July 2d, 1869		
April	9	" tax paid on land, 478.85, with damages at 50 % per annum from July 2d, 1869		
June	30	" 4 double cabins moved, all complete, @ 250	1, 000 00	
		" driven well 85 ft. 127.50, and labor to sink same, 2.50	130 00	
		" cleaning out 703 rods of ditching, @ $1 per rod	703 00	
Sept.	3	" patching boiler 240, new gibbs 10, and follower-block 25	275 00	
		" repairing gin 50, dwelling 15, and cementing 2 cisterns 58	123 00	
Nov.	1	" moving and erecting stables with new sills, &c	250 00	
	20	" 5,000 new rails put on fence, @ $5C. pr. m	250 00	
388	1870.	Amounts carried over		
		Amounts brought over		
Nov.	20	To Rothwell judgment, it being a claim for work done on boiler in the fall of 1867	361 00	
1871.		1871.		
Feb'y	28	" land-tax paid sheriff $371.08, with damages at 50 % per annum from July 2d, 1869		
Mch.	30	" 1 double cabin, moved, all complete, (Peter's)	250 00	
April	5	" tax paid 10c. levee board 255.20, with damages at 50 % per annum from July 2d, 1869		
May	3	" 52½ rods plank fence, moved, @ 1.50	78 25	
June	13	" tax paid, 5c. levee board 130, with damages, 50 % per annum, from July 2, 1869		
July	31	" 132½ rods of plank fence moved, @ 1.50	198 25	
Dec.	1	" land-tax paid sheriff 600$, with damages at 50 % per annum from July 2d, 1869		
	22	" 20,000 new rails put on fence, @ 50$ per M	1, 000 00	
		" 5 houses, containing 6 rooms, built of new material, on swamp field, @ $150 per room	900 00	
		" 2 cribs 75, 1 cotton-house 50, and stable 50, of new material	175 00	
		" 2 wells dug and curbed up, @ 50$	100 00	
		" 1 double cabin moved, all complete, (Carter's)	250 00	
	3	" re-erecting same cabin 150, and crib blown over by wind	250 00	
1872.		1872.		
Jan'y	22	" 1 single cabin moved, all complete, (Spencer's)	125 00	
Feb'y	22	" 1 " " " " " (Charles)	125 00	
April	6	" tax paid levee board 255.20, with damages @ 50 % per annum from July 2d, 1869		
	30	" tax paid 5c. levee board 127.60, with damages at 50 % per annum from July 2d, 1869		
June	30	" clearing up 40 acres of brier patch and putting same in cultivation, @ $5 an acre	200 00	
Oct.	28	" deepening well and putting down curbing	25 00	
Nov.	3	" dwelling with 4 rooms, all new material	2, 500 00	
		Amounts carried over		

Exhibit No. 2—Continued.

		Amounts.	Interest.
389 1872.	Amounts brought over		
Nov. 3	To servants, house, kitchen, crib, stable, sheds, well with curbing, hen-house, gates, lots, &c.	1,000 00	
Dec. 2	" land-tax paid sheriff 1,377.81, with damages at 50 % per annum from July 2d, 1869		
30	" 1 single cabin moved, all complete	125 00	
	" 3 double-cabins " " "	750 00	
	" new foundation to cotton-press 150, & new pinion 50	200 00	
	" repairing brick kitchen 25, & single chimney 10	35 00	
	" " servant's house, chimney, sheds, & doors, &c	25 00	

E. and O. E.
SWIFTWATER, *Jan'y 23rd*, 1873.

V., D., AND W. F. MONTGOMERY,
Per VICTOR MONTGOMERY.

(Endorsed:) Exhibit No. 2. Filed Jan'y 22d, 1873. A. McGehee, comm'r.

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EXHIBIT No. 3.

(Supplemental to Exhibit No. 2.)

			Dr.
1869.	Taxes paid by V., D., and W. F. Montgomery:		
July 2	To tax-title, from liquidating levee board	$132 00	
	With damages at 50 % per annum from May 11th, 1869, to Nov. 21st, 1872		232 50
Aug. 12	" redemption of land from 10c. levee board 721.45	721 45	
	With 50 % per annum damages from May 7th, 1868, to Nov. 21st, 1872		1,638 70
1870.			
March	To bridge-tax paid 51.04	51 04	
	With damages at 50 % from date of payment to Nov. 21st, 1872		68 65
April 29	" redemption of land from 10c. levee board 478.75	478 75	
	With 50% per annum damages from 13th April, 1870, to Nov. 21st, 1872		623 75
1871.			
Feb'y 28	" tax paid sheriff on land 371.08	371 08	
	With 50 % per annum damages from Feb. 28th, 1871, to Nov. 21st, 1872		321 05
April 5	" tax paid 10c. levee board 255.20	255 20	
	With 50 % damages from Ap. 5th, 1871, to Nov. 21st, 1872		207 70
June 13	" redemption of land from 5c. levee board 130.60	130 60	
	With 50 % damages from May 8, 1870, to Nov. 21, 1872		165 65
Dec. 1	" tax paid sheriff on land 600.60	600 60	
	With 50 % per annum from Dec. 1st, 1871, to Nov. 21st, 1872		299 00
1872.			
April 6	" tax paid 10c. levee board 255.20	255 20	
	With 30 % damages from April 6th, 1872, to Nov. 21st, 1872		79 80
April 30	" tax paid 5c. levee board 127.60	127 60	
	With 50 % damages from April 30th, 1872, to Nov. 21st, 1872		35 80
Dec. 2	" tax paid sheriff on land for 1872	1,377 81	
		$4,501 63	3,673 65
	Interest to principal	3,673 65	
	Total taxes and damages		$8,175 28

(Endorsed:) Supplement and explanatory Exhibit No. 2. Exhibit No, 3. Filed Jan'y 27th, 1873. A. McGehee, comm'r.

391 EXHIBIT No. 4.

List of lands in Washington County, Mississippi, belonging to A. B. Montgomery and subject to taxation on the 1st May, A. D. 1867.

Parts of section.	Section.	Township.	Range.	No. acres.	Value per acre.	Whole value.	Tax.
S. W. ¼	9	17	8	162	$20	3,240	3 24
In S. ½	10	"	"	194	20	3,880	3 88
In S. ½	11	"	"	109	20	2,180	2 18
All	12	"	"	647	20	12,940	12 94
All	13	"	"	640	20	12,800	12 80
All	14	"	"	640	10	6,400	6 40
S. W. ¼	15	"	"	160	5	800	80
				2,552			
State land-tax							$42 24
County, general, 50 pr. ct. on State tax							21 12
County, special, 50 " " " "							21 12
Convention 50 " " " "							21 12
Probate judge, 20 " " " "							8 45
Bridge tax, 2,552 acres, 2 cts. per acre							51 04
Special levee, 2,552 " 5 " "							127 60
							$292 69

Received of A. B. Montgomery, f'r Chas. Bosley, the sum of two hundred and ninety-two dollars and sixty cents, in full payment of
392 State, county, special, convention, and bridge taxes on the above lands for the fiscal year beginning on the first day of May, A. D. 1867, and ending on the first day of May, A. D. 1868.

S. GREANY,
Sheriff and Collector of Taxes, Washington Co., Miss.

GREENVILLE, MISS., *June 2d, A. D.* 1868.

Exhibit No. 4. Filed Jan'y 28, 1873.

A. McGEHEE, *Commr.*

EXHIBIT No. 5.

Know all men by these presents that I, W. E. Montgomery, secretary and treasurer of "The board of commissioners to liquidate outstanding liabilities incurred for levee purposes prior to the first day of January, 1862," in consideration of the sum of ($129.70) one hundred and twenty-nine and $\frac{70}{100}$ dollars to me in hand paid by W. F. Montgomery, Victor Montgomery, and Davidella Montgomery, the receipt of which is hereby acknowledged, have bargained, granted, and sold, and by these presents doth bargain, grant, and sell unto the said Victor, Davidella, and W. F. Montgomery, and to their heirs and assigns forever, without war-
393 ranty of any kind the following lands in the county of Washington and State of Mississippi, to wit: The S. W. ¼ of section nine, township (17) seventeen, range eight, 162 acres; in S. ½ section ten, 194 acres; S. ½ section (11,) eleven, 109 acres; all section (12) twelve, 647 acres; all section thirteen, 640 acres; all section fourteen, 640 acres, S. W. ¼ section fifteen 160 acres; all in township seventeen, range eight west, and containing in the aggregate 2,552 acres, more or less; the said lands being claimed as the property of said board, under sales made for the levee tax due thereon. Given under my hand and private seal, there being no seal of office, this 2nd day of July, A. D. 1869.

W. E. MONTGOMERY, [SEAL.]
Secretary and Treasurer.

STATE OF MISSISSIPPI,
Washington County, ss:

Personally came before me, the undersigned, clerk of the probate court in and for the said county, the above-named W. E. Montgomery, who acknowledged that he signed, sealed and delivered the foregoing
394 deed as his act and deed as secretary and treasurer of the board of commissioners therein named and on the day and year therein mentioned.

Given under my hand and seal of said court this 3rd day of July, A. D. 1869.

[L. S.]

JOHN FAWN, *Clerk*,
By E. J. COMSTOCK, *D. C.*

STATE OF MISSISSIPPI,
Washington County:

I, John Fawn, clerk of the probate court in and for said county do hereby certify that the foregoing deed, having revenue stamps of the value of $\frac{50}{100}$ dollars thereon was filed in my office for record 12th day of July, 1869, and this day duly recorded in deed-book "N," page 496 and 497.

Given under my hand and official seal this 26th day of July, 1869.

[L. S.] JOHN FAWN, *Clerk.*

Exhibit No. 5. Filed Jan'y 28, 1873.

A. McGEHEE, *Com'r.*

395 EXHIBIT No. 6.

Lands in Washington County assessed to A. B. Montgomery, sold to the treasurer of the board of levee commissioners for the counties of Bolivar, Washington, and Issaquena, the 7th day of May, 1868, for non-payment of the levee tax due said board for the year 1867, and redeemed by Victor, W. F., and Davidella Montgomery the 12th day of August, 1869, for the following sums:

Part of section.	Sec.	Town.	R.	Acres.	Levee-tax.	Costs.	State tax.
S. W. ¼	9	17	8	162	16 20	.....	3 24
In S. ½	10	"	"	194	19 40	.....	3 88
" S. ½	11	"	"	109	10 90	.....	2 18
All	12	"	"	647	64 70	.....	12 94
All	13	"	"	640	64 00	.....	12 80
All	14	"	"	640	64 00	.....	6 40
S. W. ¼	15	"	"	160	16 00	1 25	80
				2,552	255 20	1 25	42 24

1867. Levee tax, 10 c. per acre		255 20		
Costs		1 25		
			256 45	
10 % int. for 1 year & 3 months			32 05	
				$288 50
1868. State tax			42 24	
10 % interest for 3 months			1 05	
				43 29
Special probate, 75 % on State tax		31 68		
Bridge tax, 2 c. per acre		51 04		
			82 70	
10 % interest for 3 mos			2 07	
				84 79
Levee-tax, 10 c. per acre			255 20	
10 % interest for 3 mos			6 83	
				261 58
County tax, 100 % on State tax			42 24	
10 % interest for 3 mos			1 05	
				43 29
				$721 45

All other taxes paid as per receipt exhibited.

Rec'd Greenville, Miss., Aug. 12, 1869, of Victor, W. F., and Davidella Montgomery, per W. L. Nugent, in the redemption of the land

396 above described the sum of seven hundred and twenty-one $\frac{45}{100}$ dollars, being amount of taxes due thereon.

N. KRETSCHMAR, *Treasurer.*

[Stamp.]

Exhibit No. 6. Filed Jan'y 28, 1873.

A. McGEHEE, *Commr.*

EXHIBIT No. 7.

List of land in Washington County, Mississippi, assessed to A. B. Montgomery and W. F. Montgomery, and subject to taxation on the 1st day of May, A. D. 1869.

Parts of section.	Section.	Township.	Range.	No. acres.
S. W. ¼	9	17	8	162
In S. ½	10	"	"	194
In S. ½	11	"	"	109
All	12	"	"	647
All	13	"	"	640
All	14	"	"	640
S. W. ¼	15	"	"	160
All	30	18	7	628
				3,180

General bridge tax, 2c. an acre, $63.60.

Received of W. F., V., and D. Montgomery the sum of sixty-three dollars and sixty cents, check, in full payment of the 2c. bridge-
397 taxes on the above lands for the fiscal year beginning on the first day of May, A. D. 1869, and ending on the first day of May, A. D. 1870.

Greenville, Miss., March 12, A. D. 1870.

C. E. MORGAN,
Sheriff and Collector of Taxes, Washington Co., Miss.,
By O. G. MORGAN, *D. T. C.*

Ex. No. 7. Filed Jan'y 28, 1873.

A. McGEHEE, *Commr.*

EXHIBIT No. 8.

Lands in Washington County assessed to A. B. Montgomery, sold to the treasurer of the board of levee commissioners for the counties of Bolivar, Washington, and Issaquena, the 13th day of April, 1870, for the non-payment of the levee-tax due said board for the year 1869, and redeemed by W. F., V., and D. Montgomery the 29th day of April, 1870, for the following sums:

398

Part of section.	Sec.	Town.	R.	Acres.	Levee-tax.	Costs.	State tax.	
S. W. ¼	9	17	8	162	.....	.....	3 24	.....
In S. ½	10	"	"	194	.....	.....	3 88	.....
In S. ½	11	"	"	109	.....	.....	2 18	.....
All	12	"	"	647	.....	.....	12 74	.....
All	13	"	"	640	.....	.....	12 80	.....
All	14	"	"	466	.....	.....	4 66	.....
S. W. ¼	15	"	"	160	.....	1 25	80	.....
				2,378			40 30	40 30

County tax, 100 % on State tax	40 30
Special " " " " " "	40 30
Bridge " 2c. per acre	47 56
Levee " 10c. " "	237 80
Costs of sale	1 25
	239 05
Liquidating levee, 5c. per acre	118 90
	$526 41
Less bridge-tax paid sheriff	47 56
	$478 85

Received of W. F., V., and D. Montgomery the sum of four hundred seventy-eight $\frac{85}{100}$ dollars, being amount of taxes, costs, &c., paid by them in redemption of the lands above described.

M. KRETSCHMAR, *Treasr.*
By POLLOCK.

Exhibit No. 8. Filed Jan'y 23rd, 1873.

A. McGEHEE,
Commr.

399 EXHIBIT No. 9.

GREENVILLE, MISS., *Nov. 19th*, 1870.

Received of Victor Montgomery fifty dollars, which is in full satisfaction of judgment obtained in the circuit court of Washington County, Miss., at the July term 1870, in the cause of E. J. Rothwell vs. Victor Montgomery.

TRIGG AND BUCKNOR,
Attos. for Plff.

ELIZA J. ROTHWELL *vs.* VICTOR MONTGOMERY. } Judgment for $398.77.

Received of William G. Yerger, agent and attorney for Victor Montgomery, the defendant in the above-entitled cause on the docket of the circuit court of Washington County, Mississippi, the sum of three hundred dollars, in part payment of three hundred and fifty dollars, which said sum I have agreed, and do hereby agree, to take in full settlement of said judgment, the said defendant paying the court costs in said suit; the balance to be paid in fifteen days.

W. R. TRIGG,
Atto. for E. J. Rothwell.

GREENVILLE, MISS., *November* 4, 1870.

400 Circuit court.

ELIZA ROTHWELL *vs.* VICTOR MONTGOMERY. } 1805. Bill of costs.

Clerk's fees:

Writ, 1.00; alias, 50; docktg., 15; filing, 50	$2 15
Ent. appearances, 10; ent. rules, 45; continuances, 60	1 15
Swearing jury, 10; ent. verdict, 10; recording judgt., 50	70
Enrolling judgt., 1.00; filing and indexing judgt., 1.00	2 00
Taxing costs	50
	$6 50

Sheriff's fees:

Ex. and retng. writ	1 50
Jury-tax	3 00
	$4 50
Total	$11 00

GREENVILLE, MISS., *Nov.* 15, 1870.

GREENVILLE, MISS., *November* 15, 1870.

Received of W. G. Yerger, eleven dollars, fees in full in case of Eliza Rothwell vs. Victor Montgomery, this 15th day of November, 1870.

JOHN P. LAUNDON, *Clerk.*

Exhibit No. 9. Filed Jan'y 28, 1873.

A. McGEHEE, *Commr.*

401 EXHIBIT No. 10.

No. 222.] SHERIFF'S OFFICE,
Washington County, Miss., Feb'y, 28, 1871.

Received of A. B. and W. F. Montgomery, $396.18, State and county tax, fiscal year 1870, as per following statement and descriptions of real estate, to wit:

		Division of section.	S.	T.	
State	$116 50	S. W. ¼	9	17	8
County	116 50	S. ½	10	"	"
Bridge	116 50	In S. ½, 109 acres	11	"	"
School	46 61	All	12	"	"
Total	$396 18	All	13	"	"
		All	14	"	"
		S. W. ¼	30	18	7

L. T. WEBBER,
Sheriff and Tax-Collector, Washington County.
By W. P. KRETSCHMAR, *D. S.*

No. 223.] SHERIFF'S OFFICE,
Washington County, Miss., Feb'y 28, 1871.

Received of Victor Montgomery, $24.92 State and county tax, fiscal year 1870, as per following statements:

State	$7 33
County	7 33
Bridge	7 33
School	2 93
Total	24 92

L. T. WEBBER,
402 *Sheriff and Tax-Collector, Washington County, Miss.,*
By W. P. KRETSCHMAR, *D. S.*

$4.80 refunded this 21 day of July, 1871.
L. T. WEBBER, *Sheriff.*

Messrs V. and D. Montgomery to E. Richardson.

To taxes paid:

Mar. 1, 1871.	To State	tax, 123.85—90	111 47	
	" co.	do. 79.60—75	59 75	
	" bridge	do. 123.85—95	117 70	
	Cash for school	do. 49.35	49 35	
		$376.65	$338 25	
	Hay		44 46	
	Total		382 71	

Recd. payt.

S. ARCHER,
By J. N. DONIPHAN.

Ex. No. 10. Filed Jan'y 28, 1873.

A. McGEHEE, *Commr.*

EXHIBIT No. 11.

GREENVILLE, MISS., *April* 5, 1871.

Received of W. T., V., and D. Montgomery the sum of three hundred and eighteen dollars, being amount of the levee-tax of ten cents per acre due the board of levee commissioners for the counties of
403 Bolivar, Washington, and Issaquena, on the following lands, to wit:

Fiscal year, 1870.

Parts of sections.	Sect.	Town.	Range.	Acres.
S. W. ¼	9	17	8	162
In S. ½	10	"	"	194
In S. ½	11	"	"	109
All	12	"	"	647
All	13	"	"	640
All	14	"	"	640
S. W. ¼	15	"	"	160
All	30	18	7	628

W. A. POLLOCK,
Deputy Collector.

Ex. No. 11. Filed Jan'y 28, 1873.

A. McGEHEE, *Comr.*

EXHIBIT No. 12.

Division of section.	S.	T.	R.	Acres.	Levee tax.	Costs.
S. W. ¼	9	17	8	162		
In S. ½	10	"	"	194		
In S. ½	11	"	"	109		
All	12	"	"	640	158 65	2 05
All	13	"	"	640	3 40	1 35
All	14	"	"	640		
S. W. ¼	15	"	"	160	162 05	3 40
All	30	"	"	628		
				3,173		

404 Levee, 5 cents per acre, 1st May, 1871 ..... $158 65
Cost sale to board 3 40
$162 05
Int. 10 per cent., 1 month 1 35
$163 40

Rec'd of Victor Montgomery, one hundred and sixty-three $\frac{40}{100}$ dollars in full of the 5 cents per acre levee-tax due on the above lands for the fiscal year ending 1st May, 1871, this 13th June, 1871.

W. E. MONTGOMERY, *Sec'ty.*

Ex. No. 12. Filed Jan'y 28th, 1873.

A. McGEHEE, *Commr.*

EXHIBIT No. 13.

No. 406.] SHERIFF'S OFFICE,
Washington County, Miss., Dec. 1, 1871.

Received of Victor Montgomery, $600.60, State and county tax, fiscal year 1871, as per following statements and descriptions of real estate, to wit:

			Division of section.	S.	T.	R.
State ...	$171 60	Paid under protest. L. T. WEBBER, *Sheriff*, By W. H. SMITH, *D. S.*	S. W. ¼ ..	9	17	8
County .	171 60		S. ¼	10	"	"
Bridge..	171 60		S. ½	11	"	"
School..	85 80		All	12	"	"
	$600 60		All	13	"	"
			All	14	"	"
			S. W. ¼...	15	"	"

L. T. WEBBER,
405 *Sheriff and Tax-Collector Washington County,*
By W. H. SMITH, *D. S.*

Ex. No. 13. Filed Jan'y 28, 1873.

A. McGEHEE, *Commr.*

EXHIBIT No. 14.

Received of Victor Montgomery & Co., the sum of three hundred and eighteen dollars, being amount of the levee-tax of 10 cents per acre due the board of levee commissioners for the counties of Bolivar, Washington, and Issaquena, (for the fiscal year 1871,) on the following lands, to wit:

Parts of section.	Sect.	Town.	Range.	Acres.	Tax.
S. W. ¼	9	17	8	162	
In S. ½	10	"	"	194	
In S. ½	11	"	"	109	
All	12	"	"	647	$318 00
All	13	"	"	640	
All	14	"	"	640	
S. W. ¼	15	"	"	160	
All	36	18	7	628	

ALEX. YERGER,
Deputy Collector.

Exhibit No. 14. Filed Jan'y 28th, 1873.

A. McGEHEE, *Commr.*

406 EXHIBIT No. 15.

No. 724.] SHERIFF'S OFFICE,
Washington County, Missi., Apr. 30th, 1872.

Received of Victor Montgomery & Co., $159.00, State and county tax,

fiscal year 1871, as per following statements and descriptions of real estate, to wit:

	Division of section.	Acres.	S.	T.	R.
	S. W. ¼	162	9	17	8
	S. ½	194	10	"	"
	S. ½	109	11	"	"
	All	647	12	"	"
	All	640	13	"	"
5c. levee, $159.00.	All	640	14	"	"
	S. W. ¼	160	15	"	"
	All	628	30	18	7
		3,180			

J. T. WEBBER,
Sheriff and Tax-Collector Washington County,
By W. H. SMITH, *D. S.*

Exhibit No. 15. Filed January 28th, 1873.
A. McGEHEE, *Commr.*

407 EXHIBIT No. 16.

No. 658.] SHERIFF'S OFFICE,
Washington County, Miss., Dec. 2d, 1872.

Received of Wortham and Montgomery, $494.97, State, county, and levee tax, fiscal year 1872, as per following statements and descriptions of real estate, to wit:

		Division of sections.	S.	T.	R.	Acres.
State	$130 45	S. W. ¼	9	17	8	162
County	65 27	In S. ½	10	"	"	194
Bridge	30 69	In S. ½	11	"	"	109
Jail	15 34	All	12	"	"	640
Bond	7 67	All	13	"	"	640
School	46 04	All	14	"	"	640
Mandamus	46 04	S. W. ¼	15	"	"	160
Levee constr	153 47	All	30	18	7	628
Grand total	494 97					3,173

L. T. WEBBER,
Sheriff and Tax-Collector Washington County,
by A. W. WEBBER, *Dep'y Shff.*

No. 656.] SHERIFF'S OFFICE,
Washington County, Miss., Dec. 2d, 1872.

Received of V. and D. Montgomery, $989.86, State, county, and levee tax, fiscal year 1872, as per following statements and descriptions of real estate, to wit:

408 Division of section.			S.	T.	R.	Acres.
State	$260 90	S. W.¼	9	17	8	162
County	130 45	In S. ½	10	"	"	194
Bridge	61 38	In S. ½	11	"	"	109
Jail	30 70	All	12	"	"	640
Bond	15 35	All	13	"	"	640
School	92 08	All	14	"	"	640
Mandamus	92 08	S. W. ¼	15	"	"	160
Levee constr	306 93	All	30	18	7	628
Grand total	$989 86					3,173

L. T. WEBBER,
Sheriff and Tax-Collector, Washington County.
By A. W. WEBBER,
Dep'y Shff.

Ex. No. 16, filed Jan'y 28th, 1873.

A. McGEHEE, *Comm'r.*

EXHIBIT No. 17.

GREENVILLE, MISS., *Dec. 22d*, 1872.

Mr. V. Montgomery to McLean Bros., Dr.

Oct. 5.	To 1 press-casting		$25 00
" " "	work on same		12 00
" " "	Babbit metal		3 60
" " "	freight and drayage to Memphis		1 75
" " "	taking of casting and drayage to river		1 50
" " "	1¼ lbs. gun-packing		1 15
" 9. "	1 strap-collar and 2 bolts		3 00
" " "	1 cap for pump-flange		2 00
			$50 00

Paid.

McLEAN BROS.

Ex. No. 17, filed Jan'y 28th, 1873

A. McGEHEE,
Comm'r.

409 EXHIBIT No. 18.

GREENVILLE, MISS., *Nov.* 30, 1872.

		260 90					
		10					
State	tax	25 68	286 68		1½ mills cash		50 60
				236 08	@ 5% discount		224 88
		130 44					
County	"	12 85					
			143 33		"25% "		107 50
		61 38					
		3					
Bridge	"	6 05					
			67 46		"15 "		57 35

		30 70				
		2				
Jail	"	3 03				
		15 35	33 75	" cash		33 75
		1				
Bond	"	1 52				
		92 08	16 88	" "		16 88
		4				
		9 07				
			101 29	" "		101 29
Mandamus	"		101 29	" "		101 29
Levee constr	.....		306 93	" "		306 93
Poll	.....		1 00	" "		1 00
			1,058 41			$1,001 47

Received of V. and D. Montgomery one thousand one $\frac{47}{100}$ dollars to pay taxes as per above statement, receipts to be delivered hereafter.

W. A. POLLOCK.

Ex. 18, filed Jan'y 28th, 1873.

A. McGEHEE, *Comr.*

410 The following deposition of W. L. Nugent also accompanied and was filed with said report of said commissioners, on the 20th day of May, 1873, to wit:

Deposition of W. L. Nugent.

I am acquainted with all the circumstances attendant upon the purchase of the Bosley trust-deed on Swiftwater, by Victor, Davidella, and William F. Montgomery. The circumstances are somewhat set out in the answer of said Montgomerys to the bill of the Canal Bank, but in addition to the amount therein mentioned as having been paid, they gave to said Bosley, through me, the control of notes given by A. B. Montgomery to me and one David Freshwater, and secured by the deed of the Nashville property given by A. B. Montgomery to John M. Montgomery, which is referred to in the pleadings. Mr. Freshwater and myself both consented to the arrangement, looking upon our security as being comparatively of very little value, and agreed to look to the young men for re-imbursement if they ever realized anything out of the secu-
411 rities thus given them. Mr. Bosley secured nothing out of those securities that I am aware of, but his lawyers regarded the control of the J. M. Montgomery deed as of vital importance to them, as well as I recollect, and said Bosley would thereby in the end realize his whole debt. He nevertheless made Mr. Victor Montgomery, through me as his counsel, sign an agreement to pay any balance of his trust-deed that might remain after exhausting the securities thus given up to him. The deed to J. M. Montgomery was absolute on its face tho' made to secure the debts due me and Freshwater, and its character as a conditional sale was never changed until Mr. A. B. Montgomery became hopelessly ruined, and despaired of ever redeeming the land. By the arrangement made with Bosley he in effect got control of the absolute title subject to the mortgage and attachment liens on the property, and his estate will ultimately, I have no doubt, make out of the trade more than his debt against Swiftwater plantation. Victor, Davidella, and William F. Montgomery own the whole Bosley debt.

I leased the Swiftwater plantation from them in 1869, at the
412 earnest request of my brother, and against my own good judgment, because of the fact that I had a claim against the parties growing out of the foregoing state of facts for nearly enough to cover the rent, and this claim they admitted to be good. My brother was sanguine of success and I knew I would loose my law-fees, about that time desperate. I lost the whole $5,000 and more on the place that year, after picking up and paying my brother's little debts, and after that could not have been induced to rent the place on any terms. It was in a dilapidated condition—some forty or fifty miles of ditching nearly entirely filled up, fences down, Bermuda grass scattered over it to a very great extent, one or two hundred acres covered up with brambles, briers, and bushes, and the main canal draining the place completely filed up. It was not in a condition for cultivation except to a very limited extent—say four hundred acres—and the annual taxes on the place were worth more than the rent. Had the place been mine, I would have
413 willingly leased for a term of seven or eight years, to any one who would pay taxes, open and dig canals and ditches, and make the necessary improvements in the way of houses for farm-laborers. To any one having 15 or 20,000$ cash, thus to expend in one season, the property would be worth at least $75,000; but to the ordinary farmer or planter, the Swiftwater plantation would be a heavy burden. I much doubt if any really responsible lessee could have been induced to take the place on any terms. The attempt to cultivate it since the war ruined A. B. Montgomery and J. W. Hughes, and came near ruining me. I know it has been with extreme difficulty that the young Montgomerys have made ends meet since they have occupied it. They still owe their mother the money borrowed from her in 1868 to pay in part the Bosley purchase. It is idle to think of renting such a place entire to any white man at all responsible, and before it could be successfully leased to negroes an outlay of 15 or 20,000$ would be necessary. To any one who knows the place, the payment of taxes and a thousand dollars
414 would be a reasonable rent; to an irresponsible man unacquainted with it, a large sum might appear reasonable, but he would hardly be able to pay it. To one who wanted to make money cotton-planting, the place would be a pretty hard bargain, at the taxes upon it, if he were required to clean out and dig the necessary ditches and make the necessary fencing. This is my estimate of it, but I *haint* ridden over the place since 1870.

W. L. NUGENT.

Sworn to and subscribed before me this 8th day of Feb'ry, 1873.

A. McGEHEE, *U. S. Comm'r.*

Cross-examined:

X-int. 1st. When was the deed from A. B. Montgomery to J. M. Montgomery made?

X-int. 2d. Was there any consideration ever given by J. M. Montgomery to A. B. Montgomery for that deed?

X-int. 3rd. Was your name or that of David Freshwater mentioned in that deed?

415 X-int. 4th. Was that deed ever delivered to J. M. Montgomery; and, if so, where, when, and by whom?

X-int. 5th. Did J. M. Montgomery ever convey his title under that deed to Bosley, or any one for the use of Bosley? If so, when, where, and by whose direction did he make said deed to Bosley or for the use of Bosley?

X-int. 6th. Do you know where that deed now is and what disposition was finally made of that deed? Did you not deliver that deed to the assignee of A. B. Montgomery after he went into bankruptcy, and say to said assignee that the title therein conveyed was a nullity, or words to that effect?

X-int. 7th. You state, in your deposition, that the deed from A. B. Montgomery to J. M. Freshwater was given to secure a debt due to you and David Freshwater, and that the notes that were intended to be secured by that deed were given by Victor, Davidella, and W. F. Montgomery, to Bosley, with your consent. Were they a part of the consideration given by said Montgomery to Bosley for the purchase of Swiftwater plantation?

416 X-int. 8th. Was the $15,000.00 and the last-mentioned notes all the consideration that was given Bosley for the Swiftwater plantation? And if anything more was given state fully what it was.

X int. 9th. Who drew up A. B. Montgomery's schedules in bankruptcy, and when were they drawn up?

X-int. 10th. Do you or not know that Montgomery contemplated bankruptcy many months before the filing of his petition in bankruptcy in Feb., 1868?

X-int. 11th. Why was his property in Tennessee included in his schedule in bankruptcy?

X-int. 12th. You say that the deed made by A. B. Montgomery to J. M. Montgomery to the Tennessee property, although absolute on its face, was a conditional sale, and that its character as a conditional sale was never changed until A. B. Montgomery become hopelessly ruined; when was that change made and how was it effected?

X-int 13th. What was the pecuniary condition of A. B. Montgomery at the time he made the deed to J. M. Montgomery? Was he solvent or insolvent?

417 X-int. 14. State fully what the indebtedness of A. B. Montgomery to you was, and how and when it was created; if for professional services what those services were.

Answers to cross-ints.

1. I do not now recollect the date exactly. It was during the year 1867, and about one year before Mr. Montgomery went into bankruptcy.

2. The consideration to support the deed was the debts due me and Freshwater, for which Mr. Montgomery gave his notes. Mine was payable to J. M. Montgomery, trustee; do not recollect as to Freshwater's. The aggregate of the two debts was about $20,000. We demanded a mortgage from Mr. M. He declined to give it because he said it would interfere with his selling of the lands, but proposed to give a deed to J. M. Montgomery, with a written agreement to reconvey to him, when he could, by sale of the land, pay our debts; and to this we assented. The deed was made and delivered to J. M. Montgomery on the day of its date, and the written defeasance or agreement to

418 Mr. Montgomery. Mr. M. then thought the land extremely valuable, and believed he could pay all his debts with it; and this was the reason why he wanted the matter concluded as it was. We did not then know that attachments had been levied on the property for large amounts, nor that there was any mortgage on it except one to secure a small debt due to Bosley.

3. Neither my name nor that of Freshwater was mentioned in the deed.

4. The deed was delivered to J. M. Montgomery and left in my office for safe-keeping.

5. He did not.

6. I do not. No disposition has been made of it other than I have heretofore stated. I don't recollect ever delivering it to the assignee of Mr. Montgomery. If I did I never told him it was a nullity. On the contrary, I explained fully the whole facts connected with the deed, so that he might take any action in the premises he deemed advisable. I never told any one the deed was a nullity; in fact it was, in my estimation, a good deed supported by a fair and valuable consideration, and the assignee was fully posted as to it, and the reasons for its execution.

419 7. The notes secured by said deed were, by the agreement between the parties, to be controlled by Bosley; that was a part of the consideration for the purchase of the Bosley debt on the Swiftwater place.

8. No; it was distinctly agreed between the parties that Victor, Davidella, and Wm. F. Montgomery were to pay Bosley any balance that might remain unpaid after applying the $15,000, and what Bosley could realize of the claims stated.

9. I did, I think.

10. He did not. He thought, until after the disasters of 1867—say in the fall—that by a sale of his Nashville property, with the aid of his growing cotton-crop, he could pay all his debts.

11. I do not recollect positively. The schedules will show.

12. It was made in the winter of 1867, Mr. M. stating that he never could pay the debts and did not care to bother himself further about it. I don't know whether he ever gave up the written agreement or not, but he treated the matter as concluded some three or four months before he went into bankruptcy. It was because of this fact that

420 I brought the matter to the attention of the assignee, thinking as a matter of law it might be doubtful whether the right to redeem or treat the J. M. Montgomery deed as a mere security for the payment of $20,000 secured by it did not vest in the assignee.

13. I regarded him as solvent; in other words, that his property at a fair valuation was worth more than his debts. I then knew only of the existence of the Estlin debts and a few small debts about Greenville. He and I thought the Nashville property worth about $200,000, and the Arkansas and Mississippi property as being worth nearly as much more. The fall in value of property after the execution of the Montgomery deed, added to the failure of the cotton-crops of that year, rendered all such calculations illusory.

14. It was in part for money borrowed before the war; the residue of the debt was a special retainer not to sue him, made in 1866, and to attend to all his business. Deeming the question in other respects

421 impertinent, I decline to answer it, even if I had the data at hand so to do.

W. L. NUGENT.

Sworn to and scribed before me this Febr'y 8, 1873.
A. McGEHEE, *U. S. Commr.*

Depo. of W. L. Nugent, filed Feb. 8, 1873.
A. McGEHEE, *Commr.*

And on said 20th day of May, 1873, the following report of said commissioners, A. M. McGehee and J. D. Stewart, on "Bosley debt and

claims presented against A. B. Montgomery," was filed in this cause, to wit:

Commissioner's report.

In the circuit court of U. S. for the so. dist. of Miss.

IN THE MATTER OF CANAL AND BANKING CO.
vs.
A. B. MONTGOMERY.

To the judges of the circuit court of the U. S. dist. aforesaid.

The undersigned commissioners, appointed by your hon. court to audit the claims against A. B. Montgomery, defendant in this cause, beg leave to report the following presented to your commrs., and also the
422 amt. due on the Bosley debt, and the interest on all as stated.

Respectfully submitted.

JAMES D. STEWART,
Comm'rs.

MEM.—Total amt. claims presented & int., $197,375.53.
" " " Bosley debt, 28,108.90.

The following claims have been presented and proved against the estate of A. B. Montgomery in the matter of Canal and Banking Co. vs. A. B. Montgomery:

423	No. 1. Note owned by S. H. Boyd for	$4,012 95	
	" 6 per c't int. on same to Nov. 21st, 1872, 6 y's, 10 mo., 21 d	1,659 35	
			$5,672 30
	2. Notes owned by Bank of Ky. for	9,480 96	
	" 6 pr. c't int. on same to Nov. 21st, 1872, 10 yrs., 11 mo., 17 days	6,236 85	
			15,717 81
	3. La. State Bank, note owned by same, for	2,829 25	
	" 6 per c't int. on same to Nov'r. 21st, 1872, 6 yrs., 10 mos., 21 d	1,169 89	
			3,999 14
	4. 5 notes, owned by Wm. Steven, each for $1,200, same dates,	6,000 00	
	" 6 per c't int. on same to same date, 6 yrs., 10 mos., 21 d..	2,481 00	
			8,481 00
	5. 5 notes, owned by Union Bank, La., each for $1,200.00..	6,000 00	
	" 6 per c't int. on same to same date, same time	2,481 00	
			8,481 00
	6. 3 notes, owned by Bank of La., each for $6,200.00	18,600 00	
	" 6 per c't int. on same to same date, 6 yr., 10 mos., 21 d	7,691 10	
	" protest fees	4 83	
			26,295 93
	7. 3 notes, Pike Lapeyre & Brother—$5,000.00, $5,000.00, $4,012.96	14,012 96	
	" 6 per c't int. on same to same date, 6 yr., 10 mo., 21 d.	5,794 35	
			19,807 31
	8. 4 notes, owned by Mrs. C. Shaw of $1,200.00 each	4,800 00	
	" 6 per c't int. to same date, 6 yr., 10 mo., 21 d	1,984 80	
			6,784 80
	9. 5 notes, owned by Canal and B'k'g Co. each for $2,446.36		
	" 5 " " " " " " " $5,000.00		
	$25,000.00	37,231 80	
	" 6 per c't int. on same to same date, 6 yrs., 10 mos., 21 d...	15,395 34	
			52,627 14
	10. 1 note, owned by G. W. Banker & Co., for	5,000 00	
	" 6 per c't int. on same to same date, 6 yrs., 10 mos., 21 d...	2,067 50	
			7,067 50
	11. 1 note, owned by E. E. Norton, assignee, for	4,012 95	
	" 6 per c't int. on same to same date, 6 yrs., 10 mo., 21 d	1,659 35	
			5,672 30
	12. 2 notes, owned by La. State B'k, for $1,200 each	2,400 00	
	" 6 per c't int. on same to same date	992 40	
			3,392 40

	Amount carried forward		163,998 63
424	Amount carried forward		163,998 63
	13. 3 notes, party unknown, of $1,200.00, each	3,600 00	
	" 6 per c't int. on same to same date, 6 yrs., 10 mos., 21 d...	1,488 60	
			5,088 60
	14. 5 notes, owned by Frank Pargoud, for $1,200.00 each	6,000 00	
	" 6 per c't int. on same to same date, 6 yrs., 10 mos., 21 d...	2,481 00	
			8,481 00
	15. 1 note, owned by Louisa D. Hickman for	5,000 00	
	" 6 per c't int. on same to same date, 6 yrs., 10 mos., 21 d ..	2,067 50	
			7,067 50
	16. 1 note, owned by W. C. James, adm'r, for	5,000 00	
	" 6 per c't int. on same to same date, 6 yrs., 10 mo., 21 d ..	2,067 50	
			7,067 50
	17. 1 note, owned by W. C. James, adm'r, for	4,012 95	
	" 6 per c't int. on same to same date, 6 yrs., 10 mo., 21 d ..	1,659 35	
			5,672 30
	Total amount claims presented		$197,375 53

425 *Bosley debt.*

The last payment of interest on the $14,000 note given by A. B. Montgomery to Charles Bosley was made on the 10th day of July, 1860, the interest was due on the 13th July, 1860, which was all the interest due on the said note up to that date, and at 8 per cent. int. was $1,120 per annum. The time from 13th July, 1860, to 30th June, 1868, dates named in said decree, was 7 years 11 months and 17 days.

Principal of note	$14,000 00
Int. from 13th July, 1860 to 30th June, 1868	8,919 25
Total prin. and int. due 30th June, 1868	$22,919 55
Deduct amt. assigned to the Montgomerys	15,000 00
Bal. due after cr. on 30th June, 1868	$7,919 55
Int. @ 8 per c't fr. 30th June, '68 to Feb'y 14th, '73	2,928 53
Bal. due on Bosley note 14th Feb'y, '73	$10,848 08
The claim of Victor, Davidella, and W. F. Montgomery	$15,000 00
Int. on said claim from 30th June, 1868, to 14th Feb'y, 1873	5,546 66
Total amount due on claim	$20,546 66
Deduct the amt. of balance due on Bosley note	10,848 08
Balance in favor of Montgomerys	$9,698 58

Upon the hypothesis that the Montgomerys own the whole Bosley debt, and the int. on the $14,000.00 note having been paid on
426 said note to 13th July, 1860, the following calculation is made:

Principal of note	$14,000 00
Int. @ 8 per c't from 13 July, 1860, to 18th Feb'y, 1873	14,108 90
Total principal and interest to " " "	$28,108 90

Respectfully submitted.

A. McGEHEE,
J. D. STEWART,
Comm'rs.

Filed May 20th, 1873.

G. T. SWANN, *Clk.*

The following notice and proof of publication of the same, together with claims presented to said commissioners in accordance with said notice, accompanied and were filed with said last-named report of said commissioners, McGehee and Stewart, to wit:

NOTICE AND PROOF OF PUBLICATION.

Notice.

In the circuit court of the United States, for the southern district of Mississippi.

IN THE MATTER OF THE CANAL AND BANKING Co. et al. *vs.* A. B. MONTGOMERY ET AL. } In equity. N. S., 99.

427 Notice is hereby given to all parties holding or claiming notes secured by the deed in trust made by A. B. Montgomery to W. L. Nugent and W. G. Yerger, trustees, on the 22nd day of May, 1866, to appear before the undersigned commissioners, or either of them, at Jackson, Mississippi, within the next thirty days from this date, and prove their claims in the form prescribed in the act of bankruptcy.

This 1st January, 1873.

ARCHY McGEHEE,
JAS. D. STEWART,
Commissioners and Masters in Chancery.

THE STATE OF MISSISSIPPI,
Hinds County:

Personally appeared before me, Peyton Robinson, an acting justice of the peace in and for said county and State, J. L. Power, publisher of a newspaper printed and published in the city of Jackson, Hinds County, Mississippi, called the Clarion, who, being duly sworn, deposes and says that the publication of a certain notice, a true copy of which is hereunto affixed, has been made in said paper for 5 weeks consecutively, to wit:

428
Vol. 36, No. 4, dated January 2d, 1873.
Vol. " No. " dated " 9, 1873.
Vol. " No. " dated " 16, 1873.
Vol. " No. " dated " 23, 1873.
Vol. " No. " dated " 30, 1873.

And I further certify that the several numbers of the newspaper containing the above-mentioned notice have been produced before me and compared with the copy annexed, and that I find the publication thereof to have been correctly made.

J. L. POWER.

Witness my hand and seal this 9th day of April, 1873.

PEYTON ROBINSON, *J. P.*

Filed Apl. 23rd, 1873.

A. McGEHEE, *Commr.*

Claims presented to said commissioners, and referred to in said report, are as follows, to wit:

429 Claim No. 1, referred to in said report, being proof of debt of S. H. Boyd, is as follows, to wit:

In the district court of the United States for the southern distict of Mississippi.

IN THE MATTER OF A. B. MONTGOMERY, bankrupt. } In bankruptcy.

SOUTHERN DISTRICT OF MISSISSIPPI:

On the 30th day of December, 1872, before me, a United States commissioner of said district, personally appeared W. A. Percy, of Greenville, in the county of Washington and State of Mississippi, attorney of S. H. Boyd, in the city of New Orleans, State of Louisiana, and after being by me duly sworn says that the said A. B. Montgomery, the person by whom a petition for adjudication of bankruptcy has been filed, was, at and before the filing of the said petition, and still is justly and truly indebted to the said S. H. Boyd in the sum of four thousand and twelve $\frac{95}{100}$ dollars, with interest thereon at six per cent. per annum from the 1st day of Jan'y 1866, for which said sum of four thousand and twelve $\frac{95}{100}$ dollars, with interest, this deponent says that said S. H.
430 Boyd has not, nor has any person by his order, or to this deponent's knowledge or belief, for his said S. H. Boyd's use, had or received any satisfaction or security whatever, save and except that hereinafter mentioned; and said deponent says that said debt, to the best of his knowledge and belief, still remains unpaid and unsatisfied; that the claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2d, 1867; that no bargain or agreement, express or implied, has been made or entered into by or on behalf of such creditor, to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever whereby the vote of such creditor for assignee or any action on the part of such creditor or any other person in the proceedings under said act is or shall be in any way affected, influenced, or controlled. Said debt is evidenced by a promissory note in the words and figures following, to wit:

431 $4,012.95. GREENVILLE, *May 22d*, 1866.

Four years after date I promise to pay, to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, four thousand and twelve $\frac{95}{100}$ dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum until final payment.

A. B. MONTGOMERY.

Secured by deed of trust duly stamped & acknowledged before me, this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

(Endorsed:) A. B. Montgomery.

And is secured by deed of trust on the following-described land, situated in Washington County, State of Mississippi, to wit: South ½ sec. 19, township 18, range 7; undivided ½ of east ½ *of* E. ½ of N.W. ¼ sec. 8; S. W. ¼ sec. 9; 194 acres in sec. 2; 109 acres in S. ½ sec. 11; all of sections 12, 13, and 14; and S. W. ¼ sec. 15; all in township 17, of range 8, containing about 3.067 acres; which said land is conveyed by deed of trust

to Nugent and Yerger, trustees, to secure payment of the notes therein described, and is estimated to be worth about $75,000. Said deed of trust is recorded at page 585 B. S. of deed-book of Washington County, Miss., and is dated May 22nd, 1866.

432

W. A. PERCY,
Att'y for S. H. Boyd.

Sworn to and subscribed before me this 30th day of Dec,, 1872.

W. R. TRIGG,
U. S. Comm'r for Southern Dist. of Miss.

Filed Jan'y 3rd, 1873.

A. McGEHEE,
J. D. STEWART,
Commrs.

Claim No. 2 referred to in said report is as follows, to wit:

Proof of debt of Bank of Kentucky.

(Copy.)

Exchange for $9,480.96.

NEW ORLEANS, *Jan'y* 4th, 1861.

Eleven months after date of this first of exchange, (second unpaid,) pay to the order of Thompson B. Flournoy, nine thousand four hundred eighty and $\frac{96}{100}$ dollars, value received, and charge the same to account of—

(Signed) A. B. MONTGOMERY.

To R. W. ESTLIN & Co., *New Orleans.*
Accepted.
(Endorsed:) T. B. Flournoy.
(Signed) R. W. ESTLIN.
R. THORNHILL.

433 This indenture made and entered into this 22nd day of May, A. D. 1866, between Alexander B. Montgomery of the first part, William L. Nugent and William G. Yerger of the second part, and Robert W. Estlin, Robert Y. Black, H. Thornhill, and Charles T. Estlin, late commercial partners under the firm-name of R. W. Estlin & Co., now in liquidation, all of the city of New Orleans, State of Louisiana, of the third part, witnesseth that the party of the first part, for and in consideration of the sum of ten dollars to him in hand paid, the receipt of which is hereby acknowledged, and for the consideration hereinafter mentioned, hath granted, bargained, sold, and by these presents doth grant, bargain, sell to the parties of the second part, those certain tracts or parcels of land lying, being, and situate in the county of Washington, Mississippi, and designated as follows, to wit: The south half of section nineteen, township eighteen, range seven west, containing 315 acres; an undivided half of the east half and east half of the northwest quarter of section eight, township seventeen, range eight west, containing two hundred acres; the southwest quarter of section
434 same township and range, containing 162 acres; in section ten, same township and range, 194 acres; in south half of section eleven, same township and range, 109 acres; all section twelve, same township and range, containing 647 acres; all section thirteen, same township and range, containing 640 acres; all section fourteen, same township and range, containing 640 acres; southwest quarter section fifteen, same township and range, containing 160 acres; in the aggre-

gate 3,067 acres; to have and to hold unto the said Nugent and Yerger, parties of the second part, and to their heirs forever; provided, however, and this indenture is in trust and upon the condition following, to wit: That, whereas the party of the first part is justly and truly indebted to the said parties of the third part for money advanced and loaned, as evidenced by sixty promissory notes, amounting in the aggregate to the sum of one hundred and fifty-eight thousand seven hundred and seventy-seven $\frac{55}{100}$ dollars, executed by the said party of the first part to his own order, and by him endorsed, all dated Greenville,
435 May 22nd, 1866, and bearing interest at the rate of six per centum per annum from the first day of January, 1866, till final payment, and payable at the counting-room of Estlin & Co., in New Orleans, La., as follows: Five for the sum of twelve hundred dollars, each payable one year after date; five for the sum of twelve hundred dollars, each payable two years after date; five for the sum of twelve hundred dollars, each payable three years after date; five for the sum of twelve hundred dollars, each payable four years after date, and five for the sum of twelve hundred dollars, each payable five years after date; five for the sum of sixty-two hundred dollars, each payable respectively at one, two, three, four, and five years after date; two for the sum of five thousand dollars, each payable one year after date; two for the sum of five thousand , each payable two years after date; two for the sum of five thousand dollars, each payable three years after date; two for five thousand dollars, each payable four years after date; two for five thousand dollars, each payable five years after date; four
436 for the sum of four thousand and twelve $\frac{95}{100}$ dollars, each payable respectively at one, two, three, and four years after date; one for four thousand and *and* twelve $\frac{95}{100}$ dollars, payable five years after date; four for the sum of eighteen hundred and ninety-six $\frac{19}{100}$ dollars, payable at one, two, three, and four years after date; one for eighteen hundred and ninety-six $\frac{20}{100}$ dollars, payable five years after date; two for twenty-four hundred and forty-six $\frac{36}{100}$ dollars, payable, respectively, in one, and two years after date; and three for twenty-four hundred and forty-six $\frac{37}{100}$ dollars, each payable respectively at three, four, and five years after date; all of which said notes are paraphed to identify them with this deed: Now, if the said party of the first part shall well and truly pay off and discharge the said several promissory notes as they severally become due and payable, then this indenture to be void; but in case he fail therein, then the said parties of the second part are authorized and empowered, after five months next subsequent to such
437 default, at the request of the holders of said notes, or any of them, and upon giving thirty days' previous notice in five public places in said county of the time and place of sale, to sell the lands aforesaid for cash, or such part thereof as may be necessary to pay the notes due and unpaid and the expenses incident to said sale, and execute proper deeds of conveyance to the purchasers, and so to continue to do from time to time as said notes, respectively, mature and are not paid. In testimony whereof the parties of the first and second parts have hereto set their hands and seals the day and year first above written.

The words "for cash" and "the expenses incident to said sale" interlined before signing.

A. B. MONTGOMERY. [SEAL.]
WM. L. NUGENT. [SEAL.]
WM. G. YERGER. [SEAL.]

STATE OF MISSISSIPPI.
Washington County:

Personally appeared before me, clerk of the probate court in and for said county, Alexander B. Montgomery, William L. Nugent, and William G. Yerger, who acknowledged that they signed, sealed, and delivered the foregoing deed on the day and year therein named, as
438 their act and deed, for the uses and purposes therein mentioned.
Given under my hand and seal of office this 24th May, A. D. 1866.

[L. S.] W. A. HAYCRAFT, *Clerk.*
By W. R. TRIGG, *D. C.*

STATE OF MISSISSIPPI,
Washington County:

I, W. A. Haycraft, clerk of the probate court of said county, do certify that the foregoing deed, having revenue stamps of the value of one hundred and fifty-nine dollars thereon, was filed for record in my office May 24th, 1866, and same day recorded in book S., pages 585 and 586.
Given under my hand and seal of office this May 24th, A. D. 1866.

[L. S.] W. A. HAYCRAFT, *Clerk.*

STATE OF MISSISSIPPI,
Washington County:

I, O. Winslow, clerk of the chancery court in and for said county, do hereby certify that the foregoing five pages and twenty-two lines on sixth page contains a full, true, and perfect copy of the original deed of trust from A. B. Montgomery to Nugent and Yerger, trustees, as the same appears of record in my office, in deed-book S, pages 585 and 586.
Given under my hand and seal of office this 26th day of October, 1872.

[L. S.] O. WINSLOW, *Clk.*
By C. McGRATH, *D. C.*

439 In the district court of the United States for the district of .

IN THE MATTER OF A. B. MONTGOMERY, bankrupt. } In bankruptcy.

DISTRICT OF KENTUCKY, *ss:*

I, H. A. Griswold, of the city of Louisville, in the county of Jefferson and State of Kentucky, president of the "President, Directors, and Company of the Bank of Kentucky," the same being an corporation incorporated by and under the laws of the State of Kentucky by the name aforesaid, and carrying on and having its chief place of business at Louisville aforesaid, in the State aforesaid, being duly sworn, do solemnly swear that I am such officer, and duly authorized to make this proof of debt.

I, the said Griswold, president as aforesaid, do further state that the said Alexander B. Montgomery, the bankrupt aforesaid, was, before the filing of the petition in bankruptcy in this case, to wit, on the 7th day of December, 1862, indebted to the said corporation, "The President, Directors, and Company of the Bank of Kentucky," in the sum of nine thousand four hundred and eighty and $\frac{96}{100}$ dollars, which said
440 indebtedness was evidenced by a bill of exchange for that amount, dated Jan'y 4th, 1861, drawn by said Montgomery, payable to

the order of Thompson B. Flournoy, addressed to and accepted by R. W. Estlin & Co., of New Orleans, payable eleven months after date, and duly endorsed by said Flournoy, and by him transferred to said corporation before maturity, for value and in due course of business; that said bill of exchange was duly presented at its maturity to said Estlin & Co. for payment, but payment thereof was refused, and thereupon the same was duly protested for non-payment, and due and legal notice thereof was given to all the parties thereto. A true copy of said bill of exchange is herewith filed as a part hereof, marked "A. B. M." No part of said bill has ever been paid, except as hereinafter stated.

Deponent further states that on the 22d day of May, 1866, the said Montgomery made, executed, delivered, duly signed, and acknowledged, and had recorded in the proper office for the record thereof, a deed of trust with power of sale, dated May 22d, 1866, the said Montgomery being the first party thereto, William L. Nugent and William G. Yerger the second parties, and the said Robert W. Estlin, Robert Y.
441 Black, H. Thornhill, and Charles T. Estlin, late commercial partners under the firm-name of R. W. Estlin & Co., of the city of New Orleans, Louisiana, the third parties thereto, whereby the said Montgomery conveyed unto the said Nugent and Yerger and heirs, &c., the various tracts of land therein described, situate in Washington County, Mississippi, amounting in the aggregate to 3,067 acres, in trust, to pay and secure the payment of the indebtedness of the said Montgomery to the said R. W. Estlin & Co., in said deed stated to be for money advanced and loaned by them to the said Montgomery, and to amount to the sum of one hundred and fifty-eight thousand seven hundred and seventy-seven and $\frac{55}{100}$ dollars, evidenced by sixty promissory notes, aggregating said sum of $158,777.55 *dollars*, executed by said Montgomery, payable to his own order and by him endorsed, all dated Greenville, May 22d, 1866, and bearing interest at the rate of 6 per cent. per annum from the 1st Jan'y, 1866, until final payment, and payable at the counting-house of said Estlin & Co., New Orleans, Louisiana; and provision was made in said deed for the sale of said lands and conveyance thereof to the purchaser or purchasers of the
442 same for the payment of the sixty notes as they respectively fell due, (all of which are particularly set out in the deed,) in case default in payment thereof was made by said Montgomery. For a particular description of said lands, the notes aforesaid, and provisions for subjecting said lands and proceeds thereof to the payment of said notes and indebtedness to said Estlin & Co., reference is here made to an official copy of said deed of trust herewith filed as part of this proof of debt, marked " D. T."

Deponent further states that the said bill of exchange dated January 4th, 1861, for $9,480.96 *dollars*, heretofore referred to, a copy which, marked "A. B. M.," has been filed herewith as part of this proof of debt, the same being the property of the said corporation, The Prest., Directors, & Co., of the B'k of Ky., as heretofore shown as constituted a part of the said indebtedness of said Montgomery to said Estlin & Co. mentioned in said deed, (the said Estlin & Co. being bound to the said corporation as acceptor thereof to the amount of said bill,) amounting in the aggregate as stated therein to $158,777.55 *dollars*; and the five notes therein mentioned as evidencing a part of said indebted-
443 ness and described as follows, to wit: "four notes for the sum of eighteen hundred and ninety-six and $\frac{19}{100}$ dollars, payable at one, two, three, and four years after date; one for eighteen hundred and ninety-six $\frac{20}{100}$ dollars, payable five years after date," were, as deponen

was informed, believes, and on that information and belief states, made, executed, endorsed, and delivered by said Montgomery to said Estlin & Co., to be by them delivered to the said President, Directors, & Co. of the Bank of Kentucky, to take up said protested and dishonored bill of exchange for $9,480.96 *dollars*, dated Jan'y 4th, 1861, payable 11 months after date, and owned as aforesaid by said corporation; and deponent is informed and states that said five notes were secured by said deed of trust and that the said lands therein conveyed as aforesaid are bound for them as well as for the other notes in said deed mentioned and described.

And deponent is informed and believes, and upon that information and belief states that said Estlin & Co. accepted said deed of trust for the purposes and on the trusts therein mentioned and set forth; that they also accepted said five notes before referred to, and in said
444 deed of trust described, for the purpose of delivering the same to said corporation to take up said protested bill of $9,480.96 dollars due to said corporation as aforesaid by said Montgomery and said Estlin & Co., and that the said five notes are the property of said corporation and constitute a debt due it by said Montgomery at and before the filing of the petition herein, and which is claimed herein.

Deponent further states that said Estlin & Co. have never delivered said five notes, made and delivered to them as aforesaid to take up said protested bill to said corporation.

Deponent further states that it is only very lately that said corporation has learned, through its agents and attorneys, of the facts of the execution of said deed of trust by Montgomery to Nugent and Yerger, and the making and delivery of said five notes to said Estlin & Co. for the purposes before mentioned and set out herein, to wit, to take up said protested bill.

Deponent is informed and further states that said Montgomery has scheduled these said five notes in his bankrupt list as debts secured by said deed of trust and as due and owing to the said corporation;
445 a fact which also very lately came to the knowledge of said corporation, and from all the information in its possession and the facts under information herein stated, said corporation believes and claims that it is entitled as the true owner of said notes to the benefit of said deed of trust, and to have the said lands sold and proceeds thereof appropriated to the payment of said five notes for its use and benefit. Said corporation has never had said notes.

Deponent further states that in entire ignorance of the execution of the deed of trust aforesaid and its objects—the making, endorsing, and delivery of the said five notes to said Estlin & Co., to take up said protested bill of exchange as aforesaid—and the security for their payment furnished by said deed of trust, the said corporation on the day of , 18 , proved said protested bill in the bankruptcy case of said Estlin or Estlin & Co. as a debt against their estate in bankruptcy, and has received a small dividend thereon, amounting to $139 & $\frac{19}{100}$ *dollars*, which dividend, which is the only payment ever made or received on said protested bill from any source whatever, was paid said cor-
446 poration on the 30th day of Dec'r, 1871.

Deponent further states that he has not, nor has said corporation, nor any member thereof, nor any person by its order, or, to this deponent's knowledge or belief, for the use of said corporation, received any security or satisfaction whatever for the said debt of $9,480.96 *dollars*, evidenced by said five notes, save and except, as before and again hereafter stated, the deed of trust of said lands in Washington County,

Mississippi, hereinbefore *and* set out and again hereinafter mentioned; that the claim hereinbefore set out, to wit, said five notes amounting to $9,480.96 *dollars*, dated May 22d, 1866, payable respectively in 1, 2, 3, 4, and 5 years, at the counting-house of said Estlin & Co., in New Orleans, Louisiana, with interest at the rate of six per cent. per annum from 1st day of January, 1866, until final payment, was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, expressed or implied, has been made or entered into by or on behalf of said corporation to sell, transfer, or dispose of the
447 said claim or any part thereof against such bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of said corporation or of any person in the proceedings under said act was, is, or shall be in any way influenced, affected, or controlled. Costs of this proof $, paid by said corporation, and is claimed as a preferred debt.

The consideration of the above-mentioned five notes, constituting the debt and claim herein made, was the amount due said corporation by said A. B. Montgomery and said Estlin & Co. on the said bill of exchange dated January 4th, 1861, drawn by A. B. Montgomery on and accepted by R. W. Estlin & Co., New Orleans, La., in favor of Thompson B. Flournoy, payable 11 months after date, endorsed and transferred in due course of business and for value to the "President, Directors & Co. of the Bank of Kentucky," duly presented for payment, and duly protested for non-payment, and due notice of protest given to all the parties thereto. The claim and debt herein made is for the aggregate of the said five notes above described, amounting to $9,480.96, with interest thereon from 1st Jan'y, 1866, payable at the counting-house of Estlin & Co., New Orleans, La., respectively, in 1, 2, 3, 4, and 5 years after
448 date; all dated May 22, 1866, drawn by said A. B. Montgomery, payable to his own order, and delivered by him to said Estlin & Co. for the purposes before stated and shown; all of which are still wholly due and owing to said corporation by said Montgomery, except so far as the small dividend before mentioned, received by said corporation from the estate in bankruptcy of said Estlin & Co. on said protested bill may be claimed or held to be a proper credit thereon.

The lien and security claimed for the payment of said five notes is the deed of trust hereinbefore mentioned, dated May 22d, 1866, made by said Montgomery to said Nugent and Yerger, conveying to them in trust 3,067 acres of land in Washington County, Mississippi, for the payment thereof and the other notes therein mentioned.

Wherefore deponent, for said corporation, and said corporation prays to be allowed to prove the debt herein set up as a lien-debt against the estate of said Montgomery, and for all proper relief. Cost of this, $1.50, paid by deponent and claimed as a prior debt.

H. A. GRISWOLD,
President Bk. Ky.

Subscribed and sworn to this 3rd day of December, 1872, and
449 same satisfactory to me, and exhibits referred to herewith filed marked by me.

J. H. WARD, *Register.*

Filed January 7th, 1873.

A. McGEHEE, *Commr.*

Claim No. 3, referred to in said commissioners' report, being proof of debt of the Louisiana State Bank, was filed with the papers in this cause in the office of the clerk of said court on the 8th February, 1871, and will be found on pages 165 to 168, inclusive, of this transcript.

Claim No. 4, referred to in said report of said commissioners, being proof of debt of Wm. Steven, was filed in this cause in said court on the 11th November, 1872, and will be found on pages 197 to 201, inclusive, of this transcript.

Claim No. 5, referred to in said report of said commissioners, being proof of debt of Union Bank of Louisiana, was filed in this cause
450 on the 15th day of July, 1872, and will be found on pages 174 to 178, inclusive, of this transcript.

Claim No. 6, referred to in said report of commissioners, being proof of debt by Bank of Louisiana, was filed in this cause on the 15th day of July, 1872, and will be found on pages 178 to 183, inclusive, of this transcript.

Claim No. 7, referred to in said commissioners' report, being proof of debt by Pike, Lapeyre and Brother, was filed in this cause on the 15th day of July, 1872, and will be found on pages 188 to 192, inclusive, of this transcript.

Claim No. 8, referred to in said commissioners' report, being proof of debt by Mrs. C. Shaw, was filed in this cause on the 15th day of July, 1872, and will be found on pages 192 to 196, inclusive, of this transcript.

Claim No. 9, referred to in said commissioners' report, being proof of debt of Canal and Banking Company, was filed in this cause
451 on the 15th day of July, 1872, and will be found on pages 183 to 188, inclusive, of this transcript.

Claim No. 10, referred to in said commissioners' report, being note owned by G. W. Banker & Co., is shown by petition filed herein on 17th day of December, 1869, and will be found on pages 170 to 172, inclusive, of this transcript.

Claim No. 11, referred to in said commissioners' report, being note owned by E. E. Norton, assignee for $4,012.95, is as follows, to wit:

$4,012.95.] GREENVILLE, *May 22d*, 1866.

One year after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, four thousand and twelve $\frac{95}{100}$ dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

[Written across the face:]
Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

(Endorsed:) A. B. Montgomery.

Filed May 7th, 1873.

A. McGEHEE, *Commr.*

452 Claim No. 12, referred to in said report of said commissioners, being two notes owned by Louisiana State Bank for $1,200.00 each, are as follows, to wit:

$1,200.00. GREENVILLE, *May* 22, 1866.

One year after date I promise to pay to the order of myself, at the

counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

[Written across the face:]
Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

(Endorsed:) A. B. Montgomery.

$1,200.00. GREENVILLE, *May* 22, 1866.

Two years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

[Written across the face:]
Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

(Endorsed:) A. B. Montgomery.

Filed May 7th, 1873.

A. McGEHEE, *Comm'r.*

453 Claim No. 13, referred to in said report of commissioners, being 3 notes, party unknown, of $1,200.00 each, is as follows, to wit:

$1,200.00. GREENVILLE, *May* 22, 1866.

Three years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

[Written across the face:]
Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

(Endorsed:) A. B. Montgomery.

$1,200.00. GREENVILLE, *May* 22*d*, 1866.

Four years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

[Written across the face:]
Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

(Endorsed:) A. B. Montgomery.

$1,200.00. GREENVILLE, *May* 22*d*, 1866.

454 Five years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans,

twelve hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per centum per annum till final payment.

A. B. MONTGOMERY.

[Written across the face:]
Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

(Endorsed:) A. B. Montgomery.
Filed May 7th, 1873.

A. McGEHEE, *Commr.*

Claim No. 14, referred to in said commissioners' report, being five notes owned by Frank Pargoud, is as follows, to wit:

$1,200.00. GREENVILLE, *May 22d*, 1866.

One year after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

[Written across the face:]
Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

(Endorsed:) A. B. Montgomery. James A. White.

455 $1,200.00. GREENVILLE, *May* 22, 1866.

Two years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars, for value received, to bear interest from first of Jan'y, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

[Written across the face:]
Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

(Endorsed:) A. B. Montgomery.

$1,200.00. GREENVILLE, *May* 22, 1866.

Three years after date I promise to pay to the order of myself twelve hundred dollars, at the counting-house of Estlin & Co., in the city of New Orleans, for value received, to bear interest from the first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

[Written across the face:]
Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

(Endorsed:) A. B. Montgomery.

$1,200.00. GREENVILLE, *May* 22, 1866.

Four years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hun-

dred dollars, for value received, to bear interest from first of Jan'y, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

[Written across the face:]
Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

(Endorsed:) A. B. Montgomery.

456 $1,200.00. GREENVILLE, *May* 22, 1866.

Five years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hundred dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

[Written across the face:]
Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

(Endorsed:) A. B. Montgomery.

STATE OF LOUISIANA:

By this public instrument of protest be it known, that on this twenty-fifth day of May, in the year one thousand eight hundred and sixty-seven, at the request of the cashier of and holder for the Citizens' Bank of Louisiana of the original note, whereof a true copy is on the reverse hereof written, I, Felix Grima, a notary public in and for the city and parish of New Orleans, State of Louisiana, duly commissioned and sworn by my deputy, Charles G. Audry, in order to demand payment of the said note went several times, during business hours, to the counting-house of Messrs. Estlin & Co., No. 48 Union street, where the said note is made payable, and found the said counting-house closed and
457 no one in or about the premises from whom said demand could be made.

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest suffered or to be suffered for want of payment of the said note.

Thus done and protested in the presence of William A. Patterson and Charles G. Audry, both of this city, witnesses.

[L. S.] In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

(Stamped) FX. GRIMA,
Not. Pub.

WM. A. PATTERSON.
CHAS. G. AUDRY.

Copy of note protested.

$1,200.00. GREENVILLE, *May* 22*d*, 1866.

One year after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, twelve hun-

dred dollars, for value received, to bear interest from first of
458 January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

[Written across the face:]
Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

(Endorsed:) A. B. Montgomery. James A. White.

Proof of debt.

In the district court of the United States for the southern district of Mississippi.

IN THE MATTER OF A. B. MONTGOMERY, bankrupt.

DISTRICT OF LOUISIANA, *ss:*

On this 31st day of May, A. D. 1872, before me, John G. Eustis, a U. S. commissioner of said district, personally appeared James A. White, of the parish of Orleans and State of Louisiana, and who, after being duly sworn and examined at the time and place aforesaid, upon his oath says that A. B. Montgomery, the person by whom a petition for adjudication of bankruptcy is filed, was, at and before the filing of said petition, and still is, justly and truly indebted to this deponent in the sum of $8,280.00, for which said sum of $8,280.00, or any part thereof, this deponent has not nor has any person by his order or, to this deponent's knowledge or belief, for his use, received any security or satisfaction whatsoever, save and except the security hereinafter mentioned; that
459 the claim was not procured for the purpose of influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, expressed or implied, has been made or entered into by or on behalf of this deponent to sell, transfer, or dispose of said claim or any part thereof against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever whereby the vote of this deponent for assignee, or any action on the part of this deponent or any other person in the proceedings under said act, has been, is, or shall be in anywise affected, influenced, or controlled.

Said debt is evidenced by five notes of said A. B. Montgomery, each for the sum of $1,200.00, all dated May, 22, 1866, and payable respectively in 1, 2, 3, 4, and 5 years after date to his own order, and by him endorsed, and all bearing interest at 6 % per annum from January 1, 1866, till payment, and amounting in all, of principal and interest, on the 1st day of May, 1872, to $8,280; which said notes, with others amounting
460 to $158,777.55 are secured by a deed of trust made by said A. B. Montgomery, on the 22 May, 1866, by which he conveyed to Nugent and Yerger, trustees, for the security of said notes the following lands in Washington County, Mississippi, viz: the S. ½ sec. 19, T. 18, R. 7 W.; an undivided half of the E. ½ and the E. ½ of N. W. ¼ sec. 8, T. 17, R. 8 W.; the S. W. ¼ sec. 9, same township and range; in sec. 10, same township and range, 194 acres; in S. ½ sec. 11, same township and range, 109 acres; all sections 12, 13, and 14, and the S. W. ¼ sec. 15, in

same township and range, containing in all 3,067 acres; which said lands are described in said deed of trust, which is on file in a suit now pending in the circuit of the United States for the southern district of Mississippi, wherein the Canal and Banking Company of New Orleans et al. are complainants, and said A. B. Montgomery et al. are defendants, No. 99, N. S., which said lands, as this deponent is informed and believes, is worth the sum of $50,000.

[L. S.] JAMES A. WHITE,
Deponent.

Subscribed and sworn to at New Orleans, La., on the 31st day of May, 1872.

Before me.

[L. S.] J. G. EUSTIS,
United States Commissioner.

Filed May 7, 1873.

A. McGEHEE,
Commr.

461 Claim No. 15, being 1 note owned by Louise D. Hickman, referred to in said commissioner's report, is as follows, to wit:

$5,000. GREENVILLE, *May* 22, 1866.

One year after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, five thousand dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGGMERY.

(Endorsed:) A. B. Montgomery. R. W. Estlin & Co., in liquidation.

[Written across the face:] Secured by deed of trust duly stamped and acknowledged before me this 24 day of May, 1866.

W. A. HAYCRAFT, *Clk.*

STATE OF LOUISIANA,
City of New Orleans:

By this public instrument of protest be it known that on this twenty-fifth day of May, in the year one thousand eight hundred and sixty-seven, at the request of Mr. Aristide Miltenberger, of this city, holerd of the original note whereof a true copy is on the reverse hereof written, I, Edward G. Gottschalk, a notary public, dwelling in the city of New Orleans, duly commissioned and sworn, demanded payment for
462 said note at the counting-room of Messrs. Estlin & Co., where the same is made payable, and was answered by Mr. H. Thornhill, co-partner of said firm, to whom I presented said note, that no funds had been deposited there to pay the same.

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interests suffered, or to be suffered for want of payment of the said note.

Thus done and protested in the presence of Selwin Magner and James Fahey, witnesses.

In testimony whereof I grant these presents under my signature and

the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[L. S.] E. G. GOTTSCHALK,
Notary Public.

[25-cent int.-rev. stamp.]

463 $5,000. GREENVILLE, *May* 22, 1866.

One year after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, five thousand dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery. R. W. Estlin & Co., in liquidation.

I, the undersigned notary, do hereby certify that the parties to the note whereof a true copy is above written, have been duly notified of the protest thereof, by letters to them by me written and addressed, dated on the day of said protest, and served on them respectively in the manner following, viz: On A. B. Montgomery, addressed to him, Greenville, Miss., put in the post-office of this city (post-paid) on the date of said protest, in time for the first mail thereafter; on R. W. Estlin & Co., in liquidation, personally.

In faith whereof I have hereunto set my name, together with Selwin Magner and James Fahey, witnesses, at New Orleans, this twenty-
464 seventh day of May, one thousand eight hundred and sixty-seven, the 26th being a Sunday.

(Signed:) E. G. GOTTSCHALK,
Notary Public.

S. MAGNER.
JAS. FAHEY.

A true copy from the original on record in my office.
New Orleans, 3rd August, 1867.

[L. S.] E. G. GOTTSCHALK, *N. P.*

[Stamped.]

Filed May 7th, 1873.

A. MCGEHEE, *Comr.*

Claim No. 16, referred to in said report of said commissioners, being 1 note owned by W. C. James, admr., &c., for $5,000.00, is as follows, to wit:

$5,000. GREENVILLE, *May* 22*d*, 1866.

Two years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, five thousand dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery. R. W. Estlin & Co., in liquidation.

[Written across the face:] Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

465 STATE OF LOUISIANA,
Parish of Orleans:

By this public instrument of protest be it known that on this twenty-fifth day of May, in the year one thousand eight hundred and sixty-eight, at the request of Joseph Hoy, of this city, holder of the original note whereof a true copy is on the reverse hereof written, I, Andrew Hero, jr., a notary public in and for the parish of Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note to Mr. Allain at the counting-house of the late firm of Estlin & Co., in this city, where the same is made payable, and also to E. E. Norton, the assignee of the estate of said late firm of Estlin & Co., at his office in this city, and demanded of them payment thereof, and was by them respectively answered that the same would not be paid, for want of funds of the parties thereto.

(The United States internal-revenue tax hereon has been paid, as per a stamp thereof for the sum of twenty-five cents, affixed to the original protest and cancelled.)

Whereupon I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well
466 against the drawer or maker of the said note as against all others whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest suffered, or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of Messrs. James Graham and George Cenas, both of this city, witnesses, who have signed with me, the notary.

In testimony whereof I grant these presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[L. S.] ANDREW HERO,
Notary Public.

[Stamp.]

$5,000. GREENVILLE, *May* 22, 1866.

Two years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, five thousand dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery. R. W. Estlin & Co., in liquidation.

[Written across the face:] Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

I, the undersigned notary, do hereby certify that the parties
467 to the note whereof a true copy is above written, have been duly notified of the protest thereof, by letters to them by me, and addressed, dated on the day of said protest, and served on them respectively in the manner following, viz, by directing the one for A. B. Montgomery, the drawer, to him at Greenville, Miss., and by my deputy, George Cenas, depositing same, postage paid, in the post-office in this city, on the day and date below written; and by delivering, per said deputy, triplicates of the notice for R. W. Estlin & Co., in liquidation, the endorsers—one thereof for R. W. Estlin, a member of said firm, to H. Thornhill, at the office in this city of said firm, said Estlin not being in at the time; one thereof to the said Thornhill, another member of

said firm, to him in person at the office of said firm in this city; and one thereof to E. E. Norton assignee of the estate of Estlin & Co., to him in person at his office in this city; all such deliverances being so made on the day and date below written.

In faith whereof I have hereunto signed my name, together with James Graham and George Cenas, witnesses, at New Orleans,
468 this twenty-sixth day of May, eighteen hundred and sixty-eight.

(Original signed)

[L. S.] ANDREW HERO, JR.,
Notary Public.

JAS. GRAHAM,
GEORGE CENAS.

A true copy of the original.
New Orleans, May 26th, 1868.

ANDREW HERO, JR.,
Not. Pub.

[Stamp.]

Filed May 7th, 1873.

A. McGEHEE, *Commr.*

Claim No. 17, referred to in said report of said commissioners, being one note owned by W. C. James, admr., &c., for $4,012.95, is as follows, to wit:

$4,012.95.] GREENVILLE, *May 22d*, 1866.

Two years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, four thousand and twelve $\frac{95}{100}$ dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery. R. W. Estlin & Co., in liquidation.

[Written across the face:] Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

469 STATE OF LOUISIANA,
Parish of Orleans:

By this public instrument of protest be it known that on this twenty-fifth day of May, in the year one thousand eight hundred and sixty-eight, at the request of Joseph Hoy, of this city, holder of the original note whereof a true copy is on the reverse hereof written, I, Andrew Hero, jr., a notary public in and for the parish of Orleans, State of Louisiana aforesaid, duly commissioned and sworn, presented said note to Mr. Allain, at the counting-house of the late firm of Estlin & Co., in this city, where the same is made payable, and also to E. E. Norton, the assignee of the estate of said late firm of Estlin & Co., at his office in this city, and demanded of them payment thereof, and was by them respectively answered that the same would not be paid, for want of funds of the parties thereto.

(The United States internal-revenue tax hereon has been paid as per stamp thereof for the sum of twenty-five cents, affixed to the original protest and cancelled.)

Whereupon, I, the said notary, at the request aforesaid, did protest, and by these presents do publicly and solemnly protest, as well
470 against the drawer or maker of the said note as against all others

whom it doth or may concern, for all exchange, re-exchange, damages, costs, charges, and interest suffered, or to be suffered, for want of payment of the said note.

Thus done and protested in the presence of Messrs. James Graham and George Cenas, both of this city, witnesses, who have signed with me, the notary.

In testimony whereof I grant the presents under my signature and the impress of my seal of office, at the city of New Orleans, on the day and year first above written.

[L. S.] ANDREW HERO,
Notary Public.

[Stamp.]

$4.012.95. GREENVILLE, *May 22d*, 1866.

Two years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, four thousand and twelve $\frac{95}{100}$ dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery. R. W. Estlin & Co., in liquidation.

[Written across the face:] Secured by deed of trust duly stamped and acknowledged before me this 24th day of May, 1866.

W. A. HAYCRAFT, *Clk.*

471 I, the undersigned notary, do hereby certify that the parties to the note whereof a true copy is above written have been duly notified of the protest thereof, by letters to them, by me addressed, dated on the day of the said protest, and served on them, respectively, in the manner following, viz, by directing the one for A. B. Montgomery, the drawer, to him at Greenville, Miss., and by my deputy, George Cenas, depositing same, postage paid, in the post-office in this city, on the day and date below written; and by delivering, per the said deputy, triplicates of the notice for R. W. Estlin & Co., in liquidation, the endorsers; one thereof for R. W. Estlin, a member of said firm, to H. Thornhill, at the office in this city of said firm, said Estlin not being in at the time; one thereof to the said H. Thornhill, another member of said firm, to him in person, at the office of said firm in this city; one thereof to E. E. Norton, assignee of the estate of Estlin & Co., to him in person, at his office in this city; all such deliveries being so made on the day and date below written.

In faith whereof I have hereunto signed my name, together with James Graham and George Cenas, witnesses, at New Orleans, this
472 twenty-sixth (26) day of May, eighteen hundred and sixty-eight.

(Original signed) ANDREW HERO, JR.,
Notary Public.

JAS. GRAHAM.
GEO. CENAS.

A true copy of the original.
New Orleans, May 26th, 1868.

[L. S.] ANDREW HERO, JR.,
Not. Pub.

[Stamp.]
Filed May 7th, 1873.

A. McGEHEE, *Commr.*

And on said 20th day of May, A. D. 1873, came the said complainants, by their solicitors herein, and filed in this cause in said circuit court of the United States their certain exceptions to the report of the special commissioners appointed in this cause by said court, stating amount due the defendants for improvements and taxes and the amounts chargeable against them for rents. Which said exceptions, together with a notice thereof to said defendants, are as follows, to wit:

Exceptions to report.

U. S. cir. court.

CANAL AND BANKING CO. ET AL.
vs.
A. B. MONTGOMERY ET AL. } In equity.

473 And now come the complainants herein, by their solicitors of record, and except to the report of the special commissioners appointed by a decree made by this honorable court at a former term stating amount due the defendants for improvements and taxes and the amounts chargeable against them for rents, &c., &c.; and, for special grounds of objections to said report, assign the following, viz:

1st. The item of $520 of Aug. 25th, 1868, for cleaning out a ditch, constitutes no valuable or permanent improvement within the meaning of the order of reference, and should not be allowed. In addition, as shown by the evidence, said allowance is excessive.

2nd. The item of $75, Nov. 20th, 1868, for rails, is excessive, as shown by the evidence taken by the commissioners.

3rd. The item of $1,312, March 1st, 1869, for cleaning out ditching, constitutes no valuable or permanent improvement within the meaning of the decree or order of reference, and should not be allowed by the court. Also, said allowance is excessive.

4th. The item of $500.00 Sept'r 1869, for rails, is excessive, as shown by the evidence. It appears from the evidence that a great part of the
474 rails were nothing but poles and saplings, and not valuable as a permanent improvement, and were not of any lasting benefit to the property. This item should be disallowed or reduced in amount.

5th. The item of $500, Dec. 1st, 1869, as appears from the evidence, was for ordinary repairs, and not for valuable or permanent improvements to said property. Also, said item as allowed is excessive.

6th. The item of $703.00, June 30th, 1870, for cleaning out a ditch, is not for valuable or permanent improvements, and should not be allowed. Said allowance, as appears from the evidence, is excessive.

7th. The item of $398.00, Sept'r 3d, 1870, was for ordinary repairs, and not for valuable or permanent improvements, and should not be allowed.

8th. The item for $250.00, Nov. 20th, is excessive, and should be reduced.

9th. The item for $1.000 00, Dec. 22d, 1871, is excessive. The proof shows that a great part of the rails were green poles or saplings, and could not be regarded as constituting any valuable or permanent improvement. Said item should be rejected or reduced.

475 10th. The item of $900.00, Dec. 22d, 1871, is excessive, and should be reduced.

11th. The item of $2,500, Nov. 3, 1872, should not be allowed. The addition or erection of the house has added nothing to the value of the property, enough or more than a sufficient number of houses being al-

ready on the place. As shown by the evidence, these alleged improvements added nothing to the rental value of the property. Said item, as shown by the proof, is excessive.

12th. The item of $1,000, of Nov. 3, 1872, is objected to on the grounds stated in objection No. 11, above.

13th. The item of $200, Dec. 30, 1872, was for ordinary repairs, and not for valuable or permanent improvements, and should be rejected.

14th. Items of $35 and $25 are objected to on the same grounds.

Said complainants also except to the report of said commissioners in their statement of the rent of said place, for the following reasons, viz:

1st. No allowance is made, as required by said decree or order of reference for the rent of said place for the period elapsing from the 8th day of February, 1868, to January, 1869, although said defendants
476 claim allowance for improvements during said period, and although said commissioners allow several items for improvements alleged to have been made during said interval.

2nd. For the year 1869 only $6,000 is allowed for the rent, although the proof shows that a portion of the place was actually rented for that sum, not including the residence and improvements, and not including at least 100 acres of valuable cleared land.

3rd. The allowance of rent for the years 1870, 1871, and 1872, as shown by the proof, is greatly below the actual rental value of the land.

Said complainants claim that said land, by the usual and customary prices for land in the county of Washington *County*, was worth at least from $7.00 to $10.00 per acre; and, as shown by the proof, there was at least 1,500 acres of open tillable land on said plantation, which was worth at least from $7.00 to $10.00 per acre for each of said years.

Said complainants also except to the statement of said commissioners, that there is due on said Bosley debt the sum of $28,108.90; and they now aver that there is only due to the defts. Victor, William
477 F., and Davidella Montgomery the sum of $15,000 of said mortgage-debt, and that it is shown by the proof taken by defts. to establish their ownership of the balance of said mortgage-debt that said balance has been paid and extinguished by property or assets which belonged to A. B. Montgomery.

Wherefore said complainants submit that said report be reformed in accordance with said objections, &c., &c.

T. A. MARSHALL, COOK, AND
JOHNSTON AND JOHNSTON,
Solicitors for Complainants.

Filed May 20th, 1873.

G. T. SWANN, *Clerk.*

Notice.

U. S. cir. court.

CANAL AND BANKING CO. ET AL.
vs.
A. B. MONTGOMERY ET AL. } In equity.

To Victor, Wm. F., and Davidella Montgomery, or Messrs. Nugent and Yerger, their solicitors of record:

You will please take notice that the complainants have this day filed exceptions to the reports of the special commissioners of the amount due defts. on the Bosley mortgage, the amount of valuable im-

478 provements, taxes, and rents filed this day; said reports having been made under an order or decree of reference made at a former term.

MARSHAL, COOK,
HARRIS AND HARRIS, AND
JOHNSTONS,
Solrs. for Complainants.

MAY 20TH, 1873.

We acknowledge personal service of this notice. Copy received May 20th, 1873.

NUGENT AND YERGER,
Sols. for Defts.

And on said 20th day of May, 1873, came also the defendants herein and filed their exceptions to said reports of said special commissioners, filed herein on said 20th day of May, 1873; which said exceptions are as follows, to wit:

U. S. circuit court.

CANAL AND BANKING CO. ET ALS.
vs.
A. B. MONTGOMERY ET ALS. } In equity.

And now on this day comes the defendants Victor, Davidella, and Wm. F. Montgomery and except to the report of the commissioners appointed by decree of this court, &c., &c., and for special grounds of exception assign the following:

1. The said commissioners failed to allow these defendants the full amount of the Bosley debt, with the legal interest due thereon.

479 The interest should have been compounded, by the very terms of the contract between the parties, and the whole debt reported as belonging to these defendants.

2. The said commissioners rejected of the claim for improvements, $4,512.50, which should have been allowed.

3. The said commissioners have rejected the claim of defendants to statutory damages on the amounts paid out by them in the purchase of tax-titles on the lands set out in the bill and pleadings, amounting to $5,996.04, which should have been allowed; or, at least, damages upon the amounts paid out in the purchase of lands not included in the Bosley mortgage should have been allowed to these defendants.

4. The said commissioners have charged these defendants with $20,000 as the rental value of the premises, when it should have been largely less than this sum, and when these defendants are not chargeable with anything but the profits realized and rents secured by them in the cultivation of said lands, claimed and held under what they deemed paramount title, without any fraud or illegal purpose, and especially without anything tortious in character or extent.

480 5. There is no account accompanyingsaid report.

Wherefore these exceptants pray that the papers and proofs be resubmitted to said commissioners, to restate their account in conformity with these exceptions, and that in all other respects their report be confirmed.

NUGENT AND YERGER,
For Defdts.

And on the 6th day of August, 1873, the following proof of debt of J. J. Gidiere was filed in this cause, to wit:

EXHIBIT A.

$4,012.95.] GREENVILLE, *May 22d*, 1866.

Three years after date I promise to pay to the order of myself, at the counting-house of Estlin & Co., in the city of New Orleans, four thousand and twelve $\frac{95}{100}$ dollars, for value received, to bear interest from first of January, 1866, at the rate of six per cent. per annum till final payment.

A. B. MONTGOMERY.

(Endorsed:) A. B. Montgomery.

(Marked:) Proof of J. J. Gidiere. Exhibit A.

D. AUGUSTIN,
Reg. in B'k'cy.

481 In the district court of the United States for the district of .

IN THE MATTER OF A. B. MONTGOMERY, bankrupt. } In bankruptcy.

DISTRICT OF , *ss:*

On this 1st day of August, A. D. 1872, before me, D. Augustin, a register in bankruptcy, of said district, personally appeared John Joseph Gidiere, of New Orleans, in the parish of Orleans and State of Louisiana, and who, after being duly sworn and examined at the time and place aforesaid, upon his oath says that A. B. Montgomery, the person by whom a petition for adjudication of bankruptcy is filed, was, at and before the filing of said petition, and still is, justly and truly indebted to this deponent in the sum of $4,012 *dollars* and 95 cents; for which said sum of four thousand and twelve dollars and ninety-five cents, or any part thereof, this deponent has not, nor has any person by his order, or to this deponent's knowledge or belief, for his use, received any security or satisfaction whatsoever, save and except the mortgage hereinafter mentioned; that the claim was not procured for the purpose of
482 influencing the proceedings under the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867; that no bargain or agreement, expressed or implied, has been made or entered into by or on behalf of this deponent to sell, transfer, or dispose of said claim, or any part thereof, against said bankrupt, or to take or receive, directly or indirectly, any money, property, or consideration whatever, whereby the vote of this deponent for assignee, or any action on the part of this deponent or any other person in the proceedings under said act has been, is, or shall be in any way affected, influenced, or controlled; and that by making this declaration and proof of debt he does not waive his privilege and mortgage, but hereby asserts and insists upon the same; that this deponent, J. J. Gidiere, is the holder and owner, for a valuable consideration, of a certain mortgage-note dated Greenville, May 22, 1866, signed A. B. Montgomery, for $4,012.95, payable three years after date, secured by deed of trust of the 24th May, 1866, before W. A. Haycraft, clerk, as fully appears by the said note hereto annexed, marked "Exhibit

A, D. A., negr.," with interest as mentioned on the face of the said
483 note. J. J. Gidiere claims the said sum of $4,012.95, with priority, as per deed of trust.

J. J. GIDIERE, *Deponent.*

Subscribed and sworn to at New Orleans on the first day of August, A. D. 1872.
Before me.

D. AUGUSTIN,
Register in Bankruptcy.

Filed Aug. 6th, 1873.

G. T. SWANN, *Clerk.*

On the 28th day of May, A. D. 1873, the same being a day in the regular term of said circuit court of the United States for the southern district of Mississippi, begun and held at the court-room thereof at Jackson, on the 1st Monday of May, A. D. 1873, the following decree was rendered in this cause by said court and entered upon the minutes thereof, to wit:

CANAL AND BANKING CO. ET AL.
vs.
A. B. MONTGOMERY ET AL. } No. 99, N. S.

And now on this day this cause coming on to be heard upon the reports of Archy McGehee and James D. Stewart, esqrs., commissioners heretofore appointed by the court under a decree rendered
484 in said cause on the 21st day of November, A. D. 1872, to ascertain the amount due and to be paid upon the Bosley debt, and to fix the amount due to the defendants under said decree for permanent improvements and for taxes paid upon said lands, and the court having heard said reports read, and also all the exceptions thereto filed by the complainants and *the* by the defendants, as well also all evidence reported by said commissioners, and the arguments of counsel, and the court being fully satisfied, it is therefore ordered, adjudged, and decreed that the exceptions taken to said report on behalf of the defendants be, and the same are hereby, overruled; and the court being of the opinion that the report of said commissioners as to the rents of said lands being in all things just and proper, it is therefore ordered, adjudged, and decreed that so much of said report as reports and fixes the amounts of rent to be charged to said defendant, be, and the same are hereby, confirmed, and the exceptions thereto taken on behalf of the complainant be and the same are overruled.

485 The court, however sustains the exceptions of the complainants to the following items of said report, to wit: Item for cleaning out ditches in the year 1868, allowed at the sum of five hundred and twenty dollars, be reduced to three hundred dollars; the item seventy-five dollars for rails be reduced to thirty-seven dollars; the item thirteen hundred and twelve dollars and fifty cents, be reduced to seven hundred dollars; the item for five hundred dollars for rails be reduced to two hundred and fifty dollars; the item for five hundred dollars for repairs on the boiler, gin, &c., be altogether disallowed; that the item of seven hundred and three dollars be reduced to four hundred dollars; the item, three hundred ninety-eight for repairs on gin, press, &c., should be reduced to two hundred dollars; the item two hundred and

fifty dollars for rails should be reduced to one hundred and twenty-five dollars; the item one thousand dollars for rails to five hundred dollars; the item of nine hundred dollars to six hundred dollars; the item one hundred and seventy-five dollars for building cribs should be reduced to one hundred and fifty dollars; the item of two thousand five hundred dollars be reduced to two thousand dollars;
486 and the item two hundred dollars for repairing cotton-press should be wholly rejected, so that the court decrees and now orders, adjudges and decrees, that there be allowed to the defendants for improvements the sum of six thousand five hundred and eighty-two dollars and thirty cents, for amounts paid in taxes and in redeeming the lands, as allowed by said commissioners, which, added to said allowance made for said improvements, makes the sum of eleven thousand eighty-three and $\frac{93}{100}$ dollars, which said sum deducted from the amount of rents found due and owing from said defendants for rent, to wit, twenty thousand dollars, leaves due upon said rents the sum of eight thousand nine hundred and sixteen $\frac{67}{100}$ dollars, which, when credited upon the Bosley debt, leaves the sum of nineteen thousand one hundred and ninety-two dollars and eighty-three cents due to the defendants as the assignees of the Bosley debt, on the 14th day of February, A. D., 1873. It is further ordered, adjudged, and decreed that Archy McGehee, esq., be, and he is hereby, appointed a commissioner herein to ascer-
487 tain, fix, and report to the court, as soon as conveniently can be, the amount of rent which said defendant should pay for said lands for the current year, 1873, to be reasonably fixed and reported on the lands in use or cultivation by the defendants; and which said amount of rent to be paid by said defendants for the year A. D., 1873 shall be, when ascertained, a further sum by which the amount now found due the defendants by this decree shall be reduced. It is further ordered, adjudged, and decreed that the said complainants shall have, and the same is accordingly so decreed, the period of ninety days from the date of this decree within which to pay to the defendants the balance found due them when charged for the rent of the current year, as hereinbefore provided for, with interest thereon from the 14th day of February, 1873, at eight per cent. per annum; and should the complainants fail, neglect, or refuse, within said period of ninety days, to pay to the defendants the balance so found due to the defendants, then in that event Frank Valliant, assignee, is hereby appointed a commissioner to make sale of said lands, after first having given thirty days' notice by publication in some newspaper published in the city of Jackson,
488 of the time and place of sale; and at said sale said complainants may then and there appear, and by bidding the sum of money found to be due the defendants after charging them with the amount of rent of the current year, become the purchasers of said property, lands, and premises by paying the amount of said bid to the defendants or their agents and attorneys, in which event said commissioner shall convey said lands and premises to the said complainants, or either of them, who may become the purchasers or purchaser under this decree, by good and sufficient deed, which, together with the receipt of said defendants for the amount so found due them under this decree, said commissioner shall report to this court for comfirmation. The land and premises herein specially referred to and to be sold as aforesaid are described as follows, to wit: The south half of section nineteen, township eighteen, (18,) range seven (7) west, containing three hundred and fifteen acres; an undivided half of the east half, and east half of the northwest quarter of section eight, township seventeen, range eight

west, containing two hundred acres; the southwest quarter of section nine, same township and range, containing one hundred and sixty-two acres; in section ten, same township and range, 194 acres; in
489 south half sec. 11, same township and range, 109 acres; all section 12, same township and range, containing 647 acres; all section 13, same township and range, containing 640 acres; all section 14, same township and range, same containing 640 acres; southwest quarter of section 15, same township and range, containing 160 acres; in the aggregate 3,067 acres. Ordered, adjudged, and decreed this 28th May, 1873.

It is further ordered, adjudged, and decreed that Archy McGehee and James D. Stewart, commissioners herein, be paid and allowed the sum of three hundred (300) dollars for their commissions herein.

[SEAL.] R. A. HILL, *Judge.*

And on the 27th day of September, A. D. 1873, the following report, with four vouchers accompanying the same, were filed in this cause, to wit:

In the circuit court of the United States for the southern district of Mississippi.

IN THE MATTER OF THE NEW ORLEANS CANAL and Banking Co. et al. *vs.* A. B. MONTGOMERY ET AL. } In equity. 99 Ch'y.

Commr.'s report.

490 The undersigned, appointed special commissioner under a decree of this court rendered on the 28th day of May, 1873, to state the amount due to Victor, W. F., and Davidella Montgomery, on the basis of said decree, would respectfully represent as follows:

That on the 14th day of February, 1873, there was due to said defendants the sum of	$19,192 83c.
Int., @ 8 %, for 6½ months	831 67
Taxes, as per vouchers filed	412 95
Total	$20,437 45
Deduct for rent	3,000 00
Bal. due defts.	$17,437 45

The above balance of $17,437.45 was due on 28th Aug., 1873.

Respectfully submitted.

ARCHY McGEHEE, *Commr.*

Filed Sept. 27th, 1873.

G. T. SWANN, *Clk.*

Voucher A, accompanying the foregoing report, is as follows, to wit:

GREENVILLE, MISS., *Apl.* 11, 1873.

Received of H. and D. Montgomery, by W. A. Pollock, the sum of one hundred and seventy dollars, being amount of the levee tax of ten cents

per acre due the board of levee commissioners for the counties of
491 Bolivar, Washington, and Issaquena, for the fiscal year 1872, on the following lands, to wit:

Parts of section.	Sec.	Town.	Range.	Acres.	Tax.
½ interest in S. W. ¼	9	17	8	108	
" " " S. ½	10	"	"	130	
" " " S. ½	11	"	"	73	
" " " all	12	"	"	427	$170
" " " all	13	"	"	428	
" " " all	14	"	"	427	
" " " S. W. ¼	15	"	"	107	
				1,700	

L. T. WEBBER,
Collector, Washington County.
By A. H. WEBBER, *D. C.*

Voucher A filed with commr's report, Sept. 27th, 1873.
G. T. SWANN, *Clk.*

Voucher B to commr.'s report.

No. 92.] SHERIFF'S OFFICE,
Washington County, Miss., April 12th, 1873.

Received of H. and D. Montgomery $85.00, State, county, and levee tax, fiscal year 1872, as per following statements and descriptions of real estate, to wit:

Division of section.	S.	T.	R.	Acres.
½ int. in S. W. ¼	9	17	8	108
" " " S. ½	10	"	8	130
" " " S. ½	11	"	"	73
" " " all	12	"	"	427
" " " all	13	"	"	428
492 ½ int. in all	14	17	8	427
" " " S. W. ¼	15	"	"	107
Five-cent levee tax for 1872, $85.00.				1,700

L. T. WEBBER,
Sheriff and Tax Collector, Washington County.
A. W. WEBBER,
Dep'y Sh'ff.

Voucher B, filed with commr's report, Sept. 27th, 1873.
G. T. SWANN, *Clk.*

Voucher C to commr.'s report.

No. 114.] SHERIFF'S OFFICE,
Washington County, Missi., April 12th, 1873.

Received of W. F. Montgomery $52.98, State, county, and levee tax,

fiscal year 1872, as per following statements and descriptions of real estate, to wit:

Division of section.	S.	T.	R.	Acres.
½ int. in S. W. ¼	9	17	8	54
" " " S. ½	10	"	"	65
" " " S. ½	11	"	"	36½
" " " all	12	"	"	213½
" " " all	13	"	"	214
" " " all	14	"	"	213½
" " " S. W. ¼	15	"	"	53½
" " " all	30	18	7	209½
Five-cent levee tax for 1872, $52.98.				1,059½

S. T. WEBBER,
493 *Sheriff and Tax Collector, Washington County,*
By A. W. WEBBER,
Dep'y Sh'ff.

Voucher C filed with commr.'s report Sept. 27th, 1873.
G. T. SWANN, *Clk.*

Voucher D to commissioner's report.

GREENVILLE, MISS., *April 12th*, 1873.

Received of W. F. Montgomery the sum of one hundred and five and $\frac{95}{100}$ dollars, being amount of levee tax of ten cents per acre due the board of levee commissioners for the counties of Bolivar, Washington, and Issaquena for the fiscal year 1872, on the following lands, to wit:

Parts of sections.	Sec.	Town.	Range.	Acres.	Tax.
½ int. in S. W. ¼	9	17	8	54	
½ " " S. ½	10	"	"	65	
" " " S. ½	11	"	"	36½	
" " " all	12	"	"	213½	
" " " all	13	"	"	214	
" " " all	14	"	"	213½	
" " " S. W. ¼	15	"	"	53½	
" " " all	30	"	"	209½	
				1,059½	

L. T. WEBBER,
Collector, Washington County.
By A. W. WEBBER.

Voucher D filed with commr.'s report Sept. 27th, 1873.
G. T. SWANN, *Clk.*

494 And on the 23rd day of October, 1873, the following exceptions to the foregoing report were filed in this cause, to wit:

Exceptions to report of Septr. 27th, 1873.

U. S. cir. ct.

CANAL AND BANKING CO. ET AL. *vs.* A. B. MONTGOMERY ET AL. } In equity.

And now come the complainants herein, by their solicitors, and except to the report of Arch. McGehee, the special commissioner, filed on the 27th day of September, 1873; and for causes of objection say that the rent of said property for the year 1873 is fixed by said commissioner at the sum of $3,000, when, in fact, under the decree of reference, the fair rental value of the land actually occupied and cultivated by said defendants for this year would be, at the ordinary, fair, and customary rate, at least the sum of $5,000, if not, indeed, the sum of $6,000.

And they further say that the rental value per acre of the land actually occupied and cultivated by said defts. for the present year at $10 per acre, which is a moderate and fair rent, would amount to at least the sum of $6,000; and for the further reasons that no notice of
495 time and place of taking the account was given to complainants.

No testimony was taken by the commr., and said report is based on the mistaken idea of the commr. that $3,000 had been agreed upon by all parties.

MARSHALL, COOK, AND JOHNSTONS.

Filed Oct. 23rd, 1873.

G. T. SWANN, *Clk.*

And on the 28th day of October, A. D. 1873, came the said defendants, by their solicitors, and entered the following motion in this cause, to wit:

In the circuit court of the United States for the southern district of Mississippi.

NEW ORLEANS CANAL BANK ET AL. *vs.* A. B. MONTGOMERY ET AL. } In equity. 99.

The defendants, by their solicitors, move the court to substitute a commissioner in the place and stead of F. Valliant, assignee, to execute the final decree entered in the above cause at former term of this
496 court for the following reasons:

1. The said Valliant is not a disinterested party in said cause being of counsel for the complainants, and interested in delaying the defendants in their recovery of the debt adjudged to be due them.

2. The said assignee has positively refused to execute said decree after notice served.

3. Unless the lands decreed to be sold are sold prior to the first day of January next, the parties interested wille be greatly injured.

NUGENT AND YERGER,
For Motion.

MARSHALL, AND JOHNSTON AND JOHNSTON,
Contra.

Filed and entered Oct. 28th, 1873. Mo. d., p. 62.

G. T. SWANN, *Clk.*

Service of notice on assignee to pay or sell, to wit:

In the circuit court of the United States for the southern district of Mississippi.

THE NEW ORLEANS CANAL AND BANKING CO. et al.
vs.
A. B. MONTGOMERY ET ALS. } In equity. 99 Ch'y.

The undersigned, appointed special commissioner under a de-
497 cree of this court rendered on the 28th May, 1873, to state the amount due to Victor, Wm. F., and Davidella Montgomery, on the basis of said decree, would respectfully represent, as follows:

That on the 14th day of February, 1873, there was due to said defendants the sum of	$19,192 83
And int. at 8% for six and ½ months	831 67
Taxes, as per vouchers filed	412 95
Total	20,437 45
Deduct for rent	3,000 00
Bal. due defts	$17,437 45

The above balance of $17,437.45 was due on 28th Aug., 1873.
Respectfully submitted.

ARCHEY McGEHEE, *Commr.*

A true copy of report.

A. McGEHEE, *Commr.*

To Frank Valliant, assignee of A. B. Montgomery, bankrupt:

We herewith present you with a certified copy of the commissioner's report in the case of the New Orleans Canal and Banking Company et als. vs. A. B. Montgomery et als., in reference to this year's rent; after deducting said rents, the amount found due us as determined by said report is $17,437.45, which sum of money we hereby demand of you, together with interest upon the same at the rate of 8 % per
498 annum from 28th August, 1873, to the time of payment; and unless the above sum is paid instanter, to us or our agent, W. R. Trigg, we demand that you immediately advertise the lands mentioned in the decree rendered on the 28th day of May, 1873, in the afore mentioned cause, for sale, and sell the same in accordance with the terms of said decree; and should you fail, refuse, or neglect to comply with our demand as above set forth we will hold you responsible for such failure, refusal, or neglect.

VICTOR, WM. F., AND DAVIDELLA MONTGOMERY,
Per VICTOR MONTGOMERY, *Trustee.*

GREENVILLE, MISS., *Oct. 7th*, 1873.

I, hereby certify that I this day delivered to Frank Valliant, assignee in bankruptcy, the originals of these copies, and that he declined either pay the money or to advertise property for sale as required.
October 7th, 1873.

W. R. TRIGG.

Filed Oct. 28th, 1873.

G. T. SWANN, *Clk.*

And on the 5th day of November, 1873, the same being a day of the November term, A. D. 1873, of said court, the following order was made in this cause, by said court, and entered upon the minutes thereof, to wit:

499 CANAL BANK ET ALS. *vs.* A. B. MONTGOMERY ET ALS. } 99.

Ordered, that the exceptions to the commissioner's report in the above cause, filed on the 27th day of September, 1873, and the motion to confirm the same, be and the same are hereby set for a hearing on the 17th day of November instant.

And on the day and year last aforesaid, to wit, the 5th day of November, 1873, a day in the November, term, A. D. 1873, of said court, the following order was made in this cause by said court, and entered upon the minutes thereof, to wit:

CANAL BANK ET ALS. *vs.* A. B. MONTGOMERY ET ALS. } 99.

On motion of defendants' solicitors, it is ordered that a rule be and the same is hereby made upon Frank Valliant, assignee, to show cause on or before the 17th day of November instant why he should not be removed from the office of executing the final decree herein entered on the day of May last, and a commissioner substituted in his
500 place to make sale of the lands therein ordered.

A copy of the foregoing rule was duly issued herein and returned executed as follows, to wit:

In the circuit court of the United States for the southern district of Mississippi, November term, A. D. 1873.

WEDNESDAY, *Nov.* 5, 1873.

CANAL BANK ET AL. *vs.* A. B. MONTGOMERY ET EL. } In equity. N. S. 99.

On motion of defendants' solicitors, it is ordered that a rule be, and the same is hereby, made upon Frank Valliant, assignee, to show cause, on or before the 17th day of November inst., why he should not be removed from the office of executing the final decree herein entered on the day of May last, and a commissioner substituted in his place to make sale of the lands therein ordered.

A true copy from the minutes.

[L. S.] Teste: GEO. T. SWANN, *Clk.*

To the marshal of the southern district of Mississippi, to be served upon Frank Valliant.

GEO. T. SWANN, *Clk.*

501 UNITED STATES MARSHAL'S OFFICE,
SOUTHERN DISTRICT OF MISSISSIPPI,
Jackson, Nov. 6th, 1873.

I hereby nominate and appoint M. Kretschmar my special deputy to execute and return the within process according to law.

LEROY S. BROWN,
U. S. Marshal.

Executed personally on the within-named Frank Valliant by reading this rule of court to him, and at same time by handing him a true copy thereof, this 11th day of November, A. D. 1873.

LEROY S. BROWN, *U. S. Marshal.*
M. KRETSCHMAR, *Sp'l Depty. Marshal.*

And on the 17th day of November, 1873, came the said Frank Valliant, assignee, and filed his answer to the rule herein against him, as follows, to wit:

United States circuit court, southern district of Mississippi.

NEW ORLEANS CANAL BANK ET AL.
vs.
A. B. MONTGOMERY ET AL. } Equity. No. 99.

The answer of F. Valliant to the rule to show cause why he should not be removed from the office of executing the final decree ren-
502 dered herein on the 28th day of May, 1873, says: He has never yet had any certified copy of said decree furnished him, or any other official notice of its contents. He was informed by letter that a decree had been rendered, and he saw a copy of it, as stated to him, in the hands of one of the defendants, but it was not given to him to enable him to make a sale under it, even if he had then been authorized to sell, or it would have been right under the circumstances to have sold, when he was required by defendants to do so.

Respondent further says that on the 7th of October, 1873, when W. R. Trigg, as agent of defendants, demanded of him payment "instanter" of an amount claimed to be due defendants, to wit, $17,437.45, as shown by the report of A. McGehee, commissioner, filed herein, as respondent is informed and believes, on the 27th day of September, 1873, the sum due defendants had not been legally ascertained, nor had ninety days been allowed complainants to pay the amount claimed by defendants to be due them.

Respondent further says that the said report of McGehee, commis-
503 sioner, was made without any notice to him of the time and place of taking it, or any evidence whatever, so far as respondent knows or believes, upon which to base it; and he had no knowledge that any such report had been made until what was stated to be a copy of it was served upon him by said Trigg at the time above stated.

Respondent further states that, as soon as he was informed such a report had been made, he wrote to one of the counsel of complainants to file exceptions to it, because it was taken without notice and without sufficient, if any, legal evidence, and because the rent allowed for this year was plainly inadequate and unreasonably low; and exceptions have been filed to it and they are not yet determined or settled by the court, but are still pending.

Respondent further says, at the time he was required to pay said sum "instanter" or proceed to advertise and sell the land "immediately" by said Trigg as above stated, he did not positively refuse to do so, tho' he did not in fact pay the money nor advertise the land for sale, because he did not think, for the reasons above mentioned, he was either bound or authorized under the decree of this court or his
504 duty as assignee to do so. And further, because under the extraordinary financial embarrassments then prevailing throughout the whole country, the general suspension of banks, and the almost en

tire destitution of our whole people of ready money, he knew a sale at such a time would inevitably result in an entire loss of the property to all parties in interest except the defendants; for he is well satisfied it could not have been sold, in cash, for as much as the amount claimed by defendants nor one-fourth of its real and fair value, nor can it yet be sold for anything approximating its reasonable value.

Respondent, further answering, says it is true the law-firm of F. and L. B. Valliant, of which he is a member, has some claims for collection against the estate of the said A. B. Montgomery, but he expressly denies that he had any feeling or prejudice against defendant, or any interest or desire in the premises than to discharge faithfully, and without favor or fear, his duty as assignee, and protect, as far as possible, the interests of all concerned.

He admits that he has, at his own expense, and without re-
505 ceiving one cent of money from the estate mentioned in the schedule, tried as far as practicable, to prevent the sacrifice and waste of the property, and, as assignee, he felt it to be his conscientious duty to do so, and no more; and for so doing he respectfully submits that he is entitled to the consideration rather than the censure of this court and all concerned who favor justice and fair-dealing.

F. VALLIANT, *Assignee.*

Sworn to and subscribed to before me this 17th day of November, 1873.

R. A. HILL, *Judge, &c.*

Filed Nov. 17th, 1873.

G. T. SWANN, *Clk.*

And on the 20th day of November, 1873, the same being another day in the said November term, A. D. 1873, of said court, the following order was made in this cause by said court, and entered upon the minutes thereof, to wit:

THE CANAL AND BANKING CO. ET AL.
vs.
A. B. MONTGOMERY ET AL. } In equity.

This cause, coming on to be heard at this term of court, on the rule made on the 5th day of November, at the present term, on motion
506 of the defendants herein, against F. Valliant, assignee in bankruptcy, of A. B. Montgomery, bankrupt, requiring him to appear and show cause why he should not be removed as commissioner under the orders or decrees of sale heretofore made in said cause, the complainants as well as the defendants being present by their respective solicitors, and the court being fully advised in the premises, now orders, adjudges, and decrees that said rule be, and the same is, hereby discharged, and said motion is now overruled, and said F. Valliant, assignee and commissioner aforesaid, is hereby in all things fully released and discharged from said rule heretofore made.

R. A. HILL, *Judge.*

And again, on the day and year last aforesaid, to wit, the 20th day of November, 1873, the same being a day in the November term, A. D. 1873, of said circuit court of the United States for the southern district of Mississippi, the following decree was rendered in this cause by said court, and entered upon the minutes thereof, to wit:

CANAL BANK OF NEW ORLEANS ET ALS.
vs.
A. B. MONTGOMERY ET ALS. } N. S. 99.

507 This day came on to be heard the motion of the complainants to set aside the report of Archy McGehee, commissioner, filed on the 27th day of September, 1873, and the court being satisfied that said commissioner failed to notify the assignee in bankruptcy of said A. B. Montgomery of the time and place of taking his account, doth order, adjudge, and decree that said motion be sustained, and that the said commissioner be, and he is hereby, directed to ascertain, fix, and report a fair and reasonable rent for such parts of the land set out in the final decree herein rendered on the 28th day of May, 1873, as the said defendants may have had in cultivation during the current year, as required by said final decree, and, after allowing a credit thereon, of any taxes paid by the said defendants upon said lands during said year, that he apply the balance to the credit of the amount decreed to be due the said defendants by said final decree, and report the residue of the mortgage debt due to the said defendants. Said commissioner will give the said defendants and said assignee at least twenty days' notice of the time and place of taking said account, and the parties may proceed
508 at once to take proof to be submitted to said commissioners, on reasonable notice of the time and place of taking the same, such notice in no case to be less than ten days, and said proof to be taken before any United States commissioner resident in the county of Washington. Said McGehee, commissioner, will make his report to this court on the fourth Monday in January next, and will accompany the same with the proof taken by and submitted to him.

And it is further ordered, adjudged, and decreed that F. Valliant, assignee of said A. B. Montgomery, bankrupt, do forthwith proceed to advertise the lands in said final decree mentioned for lease at public auction to the highest bidder, at the court-house door *of* in Washington County, by publication in the "Weekly Times," a newspaper published in the town of Greenville, in this State, for four weeks successively at least once each week, and that he exact from the party leasing a sufficient amount in cash to pay all accruing taxes on said lands, and for the residue take bond and security payable on the 15th day of November next.

That said assignee, in renting said lands, shall rent the same
509 in whole or in parcels, as he may deem will insure the best price, and that by consent of the defendants and counsel for complainants said lands, or any portion of them, may be rented privately, the said renting to be made on or before the first day of January next; and if rented the lessees to hold possession of the leased premises during the terms of said lease, and for a reasonable time thereafter, of the lands on which any of the crops may remain ungathered to gather the same. It is further ordered that the sale of the lands described in the former decree be suspended until after the coming in of the report of the commissioner, as above provided: provided the court or judge shall not sooner direct the sale to be made, or direct a further postponement; and provided further, that if the sale is made during the pendency of any lease of the premises as above directed, it shall be made subject to such lease; all other matters being reserved.

This November 20th, 1873.

R. A. HILL, *Judge.*

510 On the 10th day of January, 1874, the following depositions of E. F. Eubank, J. C. Voight, James Archer, and J. H. Horner, were filed in this cause, to wit:

In the circuit court of the United States for the southern district of Mississippi.

CANAL BANK OF NEW ORLEANS ET AL. *vs.* A. B. MONTGOMERY ET AL. } In equity. N. S. 99.

Depositions of E. F. Eubank, G. C. Voight, James Archer, jr., and J. H. Horner, witnesses for defendants, taken before S. W. Ferguson, a commissioner of said court, at his office in the town of Greenville, in accordance with decree of said court hereunto annexed; said witnesses having been each duly sworn according to law, depose and say as follows, to wit:

Deposition of E. F. Eubank.—Answers to interrogatories.

Int'y 1. State your name, age, residence, and occupation.

Ans. E. F. Eubank; 26 years of age; Greenville, Washington County, Miss.; occupation, deputy sheriff.

Int'y 2d. How long have you resided in Washington County,
511 and what has been your occupation heretofore?

Ans. Since Jan'y 5, 1870; have been engaged in farming until 1873, exclusively; am still farming, on a small scale, near Greenville.

Int'y 3. State whether or not Victor Montgomery offered to rent you the Montgomery Swiftwater plantation, situated in Washington County, Mississippi, in Jan'y last, for the year 1873, and if yea, state upon what terms and conditions.

Ans. Mr. Montgomery at that time offered to rent me said plantation for the year 1873 for three thousand dollars, to be paid in the fall of 1873, when the crop should be gathered. He also offered to sell me his mules and corn and take my note for them, payable in the fall, the note to be secured by a lien upon the mules and growing crop. I declined his proposition.

Int'y 4. What were your reasons for declining said proposition?

Ans. I did not think that after paying such rent there would be any margin left for profit to me. There were not sufficient cabins on the place to accommodate a sufficient number of laborers to cultivate
512 the cleared land. I did not wish to pay for more land than I could cultivate.

Answers to X-interrogatories.

X 1. Did you have sufficient capital at the commencement of the year 1873 to undertake the cultivation of a plantation of the size of the Swiftwater plantation?

Ans. Yes; with the offers he made of selling the mules and corn on time.

X 2. How much cash capital did you have, and how much stock of your own that you could make available at that time?

Ans. I had some eight or ten head of stock of my own which I could have made available, and seven hundred dollars in cash.

X 3. Do you know how many acres of cleared land there are on the Swiftwater plantation?

Ans. I understood there was some seven or eight hundred.

X 4. Did you employ your means in the cultivation of a cotton crop during year 1873?

Ans. No; only cultivated thirty acres.

X 5. How much per acre did you pay for that land?

Ans. I paid seven dollars per acre for that land.

513 X 6. How many houses were there on that land?

Ans. One house to live in, I mean a cabin, and a stable for four horses.

X 7. Was that thirty acres a portion of a large cleared field; and if so, about how many cleared acres were there in the whole field?

Ans. It was a portion of a large cleared field, of about three or four hundred acres.

X 8. What was the condition of the fences around the whole of that field when you rented it?

Ans. A portion of it, say one-fourth, was very bad; the balance was very good.

X 9. Was not the whole north string of the fence, extending for a mile or more, in very bad condition, amounting to almost no fence at all, until the same was repaired late in the fall of 1873?

Ans. It was in bad repair until about October, 1873.

Re-examined.

1. Did you consider the means, credit, &c., in January last, at your disposal, sufficient to work the Swiftwater plantation under Mr. Victor Montgomery's proposition?

Ans. Yes.

514 2. Were you much molested by stock on the 30 acres cultivated by you this year?

Ans. No.

E. F. EUBANK.

Sworn to and subscribed before me this 26th day of December, 1873.

S. W. FERGUSON,
Commr.

Deposition of G. C. Voight.—Answers to interrogatories.

Int'y 1. State your name, age, residence, and occupation.

Ans. G. C. Voight; 32 years of age; Washington County, Miss.; have been engaged in farming, up to this year.

Int'y 2. Are you acquainted with the lands embraced in Swiftwater plantation, Washington County, Miss., lately owned by A. B. Montgomery, bankrupt, and now occupied and cultivated in part by Victor and W. F. and Davidella Montgomery?

Ans. I am, and have been, acquainted with the lands in question for six years. I lived on the adjoining plantation for five years preceding January, 1873.

Int'y 3. Are you acquainted with the land cultivated during the present year on said plantation; if so, state the number of acres so cultivated.

Ans. Yes, I rode over it a few days ago, and I think there is
515 about six hundred acres cultivated.

Int'y 4. What would be a fair and reasonable rent for the land cultivated during the present year on said plantation?

Ans. I suppose about four dollars per acre for six hundred acres.

G. C. VOIGHT.

Sworn to and subscribed before me this 23rd day of December, 1873.

S. W. FERGUSON,
Commr.

Deposition of James Archer, jr.—Answers to interrogatories.

Int'y 1. State your name, age, residence, and occupation.

Ans. James Archer, jr.; 30 years of age; Washington County, Miss.; planter.

Int'y 2. Are you acquainted with the lands embraced in Swiftwater plantation, Washington County, Miss., lately owned by A. B. Montgomery, bankrupt, and now occupied and cultivated in part by Victor, W. F., and Davidella Montgomery?

Ans. I am and have been for about two years; have lived during that time, and am now living, on the adjoining plantation.

Int'y 3. Are you acquainted with the land cultivated during
516 the present year on said plantation; if so, state the number of acres so cultivated.

Ans. Yes, I am; about six hundred acres in cultivation.

Int'y 4. What would be a fair and reasonable rent for the land cultivated during the present year on said plantation?

Ans. About four dollars per acre.

JAMES ARCHER, JR.

Sworn to and subscribed before me this 23rd day of December, A. D. 1873.

S. W. FERGUSON, *Comr.*

Deposition of J. H. HORNER, a witness for defendants, who, having been duly sworn, deposes and says:

Answers to interrogatories.

Int'y. State your name, age, residence, and occupation.

Ans. J. H. Horner; age, 28 years; Washington County, Miss.; Sellar's plantation, adjoining Swiftwater plantation; planter.

Int. 2. Are you acquainted with the lands embraced in Swiftwater plantation, Washington County, Miss., lately owned by A. B. Montgomery, bankrupt, and now occupied and cultivated in part by Victor and W. F. and Davidella Montgomery?

Ans. Yes; I am pretty well acquainted with it, have been hunt-
517 ing over it, and have ridden over it several times.

Int'y 3. Did Victor Montgomery offer to rent you a portion of said plantation for the year 1873; and, if so, state the number of acres and the rate per acre he offered?

Ans. About the first of March, 1873, Mr. Montgomery offered to rent me from one to five hundred acres of said Swiftwater plantation at two dollars and a half per acre. I declined to take it.

Int'y 4. Are you acquainted with the land cultivated during the present year on said plantation; if so, state the number of acres so cultivated?

Ans. A week or two ago I rode all over the place in company with Mr. James Archer, jr., and we estimated the different cuts separately; as near as we could come at it, the number of acres in cultivation is six hundred.

Int. 5. What would be a fair and reasonable rent for the land cultivated during the past year on said plantation?

Ans. I think from $3.50 and not exceeding $4.00 per acre, as there is about one hundred and fifty acres of the land cultivated, covered with Bermuda grass, and no crop made on it, or very indifferent crop in spots.

518 Cross-examined:

X 1. State whether or not you have rented any land for the year 1873; and, if yea, where, and for what price per acre?

Ans. Yes; I rented land, and on the adjoining plantation. I rented about nine hundred acres in copartnership with E. Richardson, for four thousand five hundred dollars.

X 2. State whether or not you took the whole plantation for that sum, including use of gin-house, firewood, &c.

Ans. I did.

X 3. Is there not more land under fence with equally good improvements on the Swiftwater plantation than on the place you rented?

Ans. There is more land, but not so many quarters on the Swiftwater plantation; with this exception the improvements are equally good.

X 4. How many acres of land out of the nine hundred did you put in cultivation this year?

Ans. About seven hundred.

X 5. Is there any portion of the plantation you rented covered with Bermuda grass; if yes, how much?

519 Ans. Not more than seven or eight acres, hardly that.

J. H. HORNER.

Sworn to and subscribed before me this 27th day of December, A. D. 1873.

S. W. FERGUSON, *Comr.*

STATE OF MISSISSIPPI,
Washington County:

I hereby certify that the foregoing depositions of E. F. Eubank, G. C. Voight, James Archer, jr., and J. H. Horner were taken by me in my office in the town of Greenville, county aforesaid, and are wholly in my own handwriting; that the assignee of A. B. Montgomery, bankrupt, was present in person to cross-examine said witnesses, and that defendants were represented by Victor Montgomery, esq.; that each deponent was by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, and that each deponent signed his deposition in my presence.

Witness my hand and official seal this 27th day of December, A. D. 1873.

[L. S.] S. W. FERGUSON,
Commr. U. S. Circuit Court.

Filed January 10th, 1874.

G. T. SWANN, *Clk.*

520 And on the 26 day of January, 1874, the following report of F. Valliant, assignee in bankruptcy of A. B. Montgomery, was filed herein, to wit:

In the circuit court of the United States for the southern district of Mississippi.

CANAL AND BANKING CO. ET. AL., *vs.* A. B. MONTGOMERY ET. AL. } No. 99.

To the judges of said court:

The report of F. Valliant, assignee of A. B. Montgomery, respectfully

shows to this honorable court that, in pursuance of a decree rendered on the the 20th day of November, 1873, in the above-entitled cause, he did, on the first day of January, 1874, at the door of the court-house in Greenville, Mississippi, offer for rent for twelve months the lands embraced in what is known as the Swiftwater plantation, when Wm. F. Montgomery, Victor Montgomery, and Davidella Montgomery became the highest and best bidders for the rent of said place as aforesaid, of and for the sum of $3,000.00 (three thousand dollars), and that out of said sum they paid the taxes due on said plantation, amounting
521 to the sum of twelve hundred and twenty-six $\frac{65}{100}$ dollars, and gave their bond, with A. M. Kirk as security, for the balance due, viz, for the sum of seventeen hundred and seventy-three $\frac{35}{100}$ dollars, payable on the 15th day of November, 1874.

All of which is respectfully submitted.

F. VALLIANT,
Assignee of A. B. Montgomery.

Filed Jan'y 26, 1874.

G. S. SWANN, *Clk.*

And on said 26th day of January, 1874, was also filed in this cause the following agreement of parties hereto, to wit:

In the circuit court of the United States for the southern district of Mississippi.

CANAL AND BANKING CO. ET. AL.,
vs.
A. B. MONTGOMERY ET. AL. } No. 99.

We, the undersigned, consider that there has been sufficient depositions taken in this case touching the rental value of Swiftwater plantation for the year 1873, and are willing to submit the case on said depositions.

F. VALLIANT,
Assignee of A. B. Montgomery.
VICTOR MONTGOMERY,
Trustee.

Filed Jan'y 26, 1874.

G. T. SWANN, *Clk*

522 And on the 28th day of January, 1874, the following report was filed in this cause, to wit:

In the circuit court of the United States for the southern district of Mississippi.

THE CANAL BANK, N. O., ET AL.,
vs.
A. B. MONTGOMERY ET AL. } N. S., 99.

The undersigned commissioner would respectfully represent that on consultation with the assignee, F. Valliant, and the defendant Montgomery, they decided it was unnecessary to take any further proof. The fact that the party complainant, objecting to commissioner's former report, has since rented the property for the same sum as reported by said

Ans. I think from $3.50 and not exceeding $4.00 per acre, as there is about one hundred and fifty acres of the land cultivated, covered with Bermuda grass, and no crop made on it, or very indifferent crop in spots.

518 Cross-examined:

X 1. State whether or not you have rented any land for the year 1873; and, if yea, where, and for what price per acre?

Ans. Yes; I rented land, and on the adjoining plantation. I rented about nine hundred acres in copartnership with E. Richardson, for four thousand five hundred dollars.

X 2. State whether or not you took the whole plantation for that sum, including use of gin-house, firewood, &c.

Ans. I did.

X 3. Is there not more land under fence with equally good improvements on the Swiftwater plantation than on the place you rented?

Ans. There is more land, but not so many quarters on the Swiftwater plantation; with this exception the improvements are equally good.

X 4. How many acres of land out of the nine hundred did you put in cultivation this year?

Ans. About seven hundred.

X 5. Is there any portion of the plantation you rented covered with Bermuda grass; if yes, how much?

519 Ans. Not more than seven or eight acres, hardly that.

J. H. HORNER.

Sworn to and subscribed before me this 27th day of December, A. D. 1873.

S. W. FERGUSON, *Comr.*

STATE OF MISSISSIPPI,
Washington County:

I hereby certify that the foregoing depositions of E. F. Eubank, G. C. Voight, James Archer, jr., and J. H. Horner were taken by me in my office in the town of Greenville, county aforesaid, and are wholly in my own handwriting; that the assignee of A. B. Montgomery, bankrupt, was present in person to cross-examine said witnesses, and that defendants were represented by Victor Montgomery, esq.; that each deponent was by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, and that each deponent signed his deposition in my presence.

Witness my hand and official seal this 27th day of December, A. D. 1873.

[L. S.]

S. W. FERGUSON,
Commr. U. S. Circuit Court.

Filed January 10th, 1874.

G. T. SWANN, *Clk.*

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In the circuit court of the United States for the southern district of Mississippi.

CANAL AND BANKING CO. ET. AL., *vs.* A. B. MONTGOMERY ET. AL. } No. 99.

To the judges of said court:

The report of F. Valliant, assignee of A. B. Montgomery, respectfully

shows to this honorable court that, in pursuance of a decree rendered on the the 20th day of November, 1873, in the above-entitled cause, he did, on the first day of January, 1874, at the door of the court-house in Greenville, Mississippi, offer for rent for twelve months the lands embraced in what is known as the Swiftwater plantation, when Wm. F. Montgomery, Victor Montgomery, and Davidella Montgomery became the highest and best bidders for the rent of said place as aforesaid, of and for the sum of $3,000.00 (three thousand dollars), and that out of said sum they paid the taxes due on said plantation, amounting
521 to the sum of twelve hundred and twenty-six $\frac{65}{100}$ dollars, and gave their bond, with A. M. Kirk as security, for the balance due, viz, for the sum of seventeen hundred and seventy-three $\frac{35}{100}$ dollars, payable on the 15th day of November, 1874.

All of which is respectfully submitted.

F. VALLIANT,
Assignee of A. B. Montgomery.

Filed Jan'y 26, 1874.

G. S. SWANN, *Clk.*

And on said 26th day of January, 1874, was also filed in this cause the following agreement of parties hereto, to wit:

In the circuit court of the United States for the southern district of Mississippi.

CANAL AND BANKING CO. ET. AL.,
vs.
A. B. MONTGOMERY ET. AL. } No. 99.

We, the undersigned, consider that there has been sufficient depositions taken in this case touching the rental value of Swiftwater plantation for the year 1873, and are willing to submit the case on said depositions.

F. VALLIANT,
Assignee of A. B. Montgomery.
VICTOR MONTGOMERY,
Trustee.

Filed Jan'y 26, 1874.

G. T. SWANN, *Clk*

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In the circuit court of the United States for the southern district of Mississippi.

THE CANAL BANK, N. O., ET AL.,
vs.
A. B. MONTGOMERY ET AL. } N. S., 99.

The undersigned commissioner would respectfully represent that on consultation with the assignee, F. Valliant, and the defendant Montgomery, they decided it was unnecessary to take any further proof. The fact that the party complainant, objecting to commissioner's former report, has since rented the property for the same sum as reported by said

Ans. I think from $3.50 and not exceeding $4.00 per acre, as there is about one hundred and fifty acres of the land cultivated, covered with Bermuda grass, and no crop made on it, or very indifferent crop in spots.

518 Cross-examined:

X 1. State whether or not you have rented any land for the year 1873; and, if yea, where, and for what price per acre?

Ans. Yes; I rented land, and on the adjoining plantation. I rented about nine hundred acres in copartnership with E. Richardson, for four thousand five hundred dollars.

X 2. State whether or not you took the whole plantation for that sum, including use of gin-house, firewood, &c.

Ans. I did.

X 3. Is there not more land under fence with equally good improvements on the Swiftwater plantation than on the place you rented?

Ans. There is more land, but not so many quarters on the Swiftwater plantation; with this exception the improvements are equally good.

X 4. How many acres of land out of the nine hundred did you put in cultivation this year?

Ans. About seven hundred.

X 5. Is there any portion of the plantation you rented covered with Bermuda grass; if yes, how much?

519 Ans. Not more than seven or eight acres, hardly that.

J. H. HORNER.

Sworn to and subscribed before me this 27th day of December, A. D. 1873.

S. W. FERGUSON, *Comr.*

STATE OF MISSISSIPPI,
Washington County:

I hereby certify that the foregoing depositions of E. F. Eubank, G. C. Voight, James Archer, jr., and J. H. Horner were taken by me in my office in the town of Greenville, county aforesaid, and are wholly in my own handwriting; that the assignee of A. B. Montgomery, bankrupt, was present in person to cross-examine said witnesses, and that defendants were represented by Victor Montgomery, esq.; that each deponent was by me first duly sworn to tell the truth, the whole truth, and nothing but the truth, and that each deponent signed his deposition in my presence.

Witness my hand and official seal this 27th day of December, A. D. 1873.

[L. S.]

S. W. FERGUSON,
Commr. U. S. Circuit Court.

Filed January 10th, 1874.

G. T. SWANN, *Clk.*

520 And on the 26 day of January, 1874, the following report of F. Valliant, assignee in bankruptcy of A. B. Montgomery, was filed herein, to wit:

In the circuit court of the United States for the southern district of Mississippi.

CANAL AND BANKING CO. ET. AL., *vs.* A. B. MONTGOMERY ET. AL. } No. 99.

To the judges of said court:

The report of F. Valliant, assignee of A. B. Montgomery, respectfully

shows to this honorable court that, in pursuance of a decree rendered on the the 20th day of November, 1873, in the above-entitled cause, he did, on the first day of January, 1874, at the door of the court-house in Greenville, Mississippi, offer for rent for twelve months the lands embraced in what is known as the Swiftwater plantation, when Wm. F. Montgomery, Victor Montgomery, and Davidella Montgomery became the highest and best bidders for the rent of said place as aforesaid, of and for the sum of $3,000.00 (three thousand dollars), and that out of said sum they paid the taxes due on said plantation, amounting
521 to the sum of twelve hundred and twenty-six $\frac{65}{100}$ dollars, and gave their bond, with A. M. Kirk as security, for the balance due, viz, for the sum of seventeen hundred and seventy-three $\frac{35}{100}$ dollars, payable on the 15th day of November, 1874.

All of which is respectfully submitted.

F. VALLIANT,
Assignee of A. B. Montgomery.

Filed Jan'y 26, 1874.

G. S. SWANN, *Clk.*

And on said 26th day of January, 1874, was also filed in this cause the following agreement of parties hereto, to wit:

In the circuit court of the United States for the southern district of Mississippi.

CANAL AND BANKING CO. ET. AL.,
vs.
A. B. MONTGOMERY ET. AL. } No. 99.

We, the undersigned, consider that there has been sufficient depositions taken in this case touching the rental value of Swiftwater plantation for the year 1873, and are willing to submit the case on said depositions.

F. VALLIANT,
Assignee of A. B. Montgomery.
VICTOR MONTGOMERY,
Trustee.

Filed Jan'y 26, 1874.

G. T. SWANN, *Clk*

522 And on the 28th day of January, 1874, the following report was filed in this cause, to wit:

In the circuit court of the United States for the southern district of Mississippi.

THE CANAL BANK, N. O., ET AL.,
vs.
A. B. MONTGOMERY ET AL. } N. S., 99.

The undersigned commissioner would respectfully represent that on consultation with the assignee, F. Valliant, and the defendant Montgomery, they decided it was unnecessary to take any further proof. The fact that the party complainant, objecting to commissioner's former report, has since rented the property for the same sum as reported by said

commissioner, removes any ground of opposition to said former report, to which commissioner respectfully refers.

Jan'y 28, 1874.

A. McGEHEE, *Commr.*

Filed Jan'y 28, 1874.

G. S. SWANN, *Clk.*

523 And on the 28th day of January, 1874, a day in the January term, A. D. 1874, of said circuit court of the United States for the southern district of Mississippi, the following order was made in this cause by said court and entered upon the minutes thereof, to wit:

NEW ORLEANS CANAL AND BANKING CO. ET ALS.
vs.
A. B. MONTGOMERY ET ALS. } 99.

This day came on to be heard the motion of defendants to confirm the report of Archy McGehee, special commissioner, this day presented, in pursuance of a former order of this court; and it appearing from said report that there is no reason why the report made by said commissioner herein on the 27th day of September, 1873, should be changed, but that said report last named represents the truth as to the matters therein set forth; it is therefore ordered, adjudged, and decreed that the order heretofore made setting aside said report of 27th September, 1873, be, and the same is hereby, set aside, and that the said last-named

524 report, showing a balance due upon the mortgage debt of William F., Victor, and Davidella Montgomery, as of the 28th day of August, 1873, after deducting the rental value of the Swiftwater plantation for the year eighteen hundred and seventy-three of seventeen thousand four hundred and thirty-seven $\frac{45}{100}$ dollars ($17,437.45) be, and the same is hereby, in all things ratified, approved, and confirmed.

And on like motion it is further ordered, adjudged, and decreed that the report of F. Valliant, assignee in bankruptcy of said A. B. Montgomery, of of the leasing of the said Swiftwater plantation for the year eighteen hundred and seventy-four at the sum of three thousand dollars to the said William F., Victor, and Davidella Montgomery, and the application of twelve hundred and twenty-six $\frac{65}{100}$ dollars thereof to the payment of taxes, &c., &c., be, and the same is hereby, in all things ratified, approved, and confirmed.

R. A. HILL, *Judge.*

And afterwards, to wit, on the 9th day of February, 1874, the same being another day in the January term, 1874, of said circuit

525 court of the United States, the following order was made in this cause and entered on the minutes of said court, to wit:

NEW ORLEANS CANAL AND BANKING COMpany et als.
vs.
A. B. MONTGOMERY ET ALS. } N. S. 99.

On motion of Victor, William F., and Davidella Montgomery, it is ordered, adjudged, and decreed that F. Vallaint, assignee, &c., proceed forthwith to advertise and sell the lands ordered to be sold by the final decree rendered herein, or so much thereof as may be of value sufficient to pay off and discharge the amount due the said Victor, William F., & Davidella Montgomery and the costs of this cause.

And on the 10th day of February, 1874, the following order, granting

an appeal herein, was made in this cause, by said court and entered upon the minutes thereof, to wit:

NEW ORLEANS CANAL AND BANKING COMpany et al.
vs.
A. B. MONTGOMERY ET ALS. } In equity. No. 99, N. S.

526 And now on this day complainants in open court pray an appeal from the several decrees rendered herein, so that the whole case may be reviewed by the Supreme Court, which is granted, and to operate as a supersedeas, upon complainants entering into bond in the penalty of five thousand dollars, with good security, to be approved by this court or the judge thereof, within sixty days from this date.

R. A. HILL, *Judge.*

And on the 24th day of March, A. D. 1874, the following appeal bond was filed in this cause, to wit:

Know all men by these presents, that the undersigned, the New Orleans Canal and Banking Company, of the city of New Orleans, State of Louisiana, a legally-incorporated banking-association, principal, and J. A. Klein, of Vicksburg and State of Mississippi, and Geo. M. Klein, of Vicksburg, and State of Mississippi, sureties, are held and firmly bound unto A. B. Montgomery, Victor Montgomery, Will-
527 iam F. Montgomery, Davidella Montgomery, William L. Nugent, and William G. Yerger, and Frank Valliant, assignee in bankruptcy of A. B. Montgomery, bankrupt, in the sum of five thousand dollars, for the payment of which well and truly to be made we bind ourselves, our heirs, assigns, executors, and administrators, jointly and severally, firmly by these presents, affixing hereto our hands and seals, this 21st day of March, A. D. eighteen hundred and seventy-four.

The condition of this bond is such that, whereas, in the chancery cause lately pending in the United States circuit court for the southern district of the State of Mississippi, in which the Canal and Banking Company et al. were complainants, and the said A. B., Victor, and W. F. Montgomery et al. were defendants, the said circuit court, on the 9th day of February, A. D. 1874, rendered a final decree against the said Canal and Banking Company et al., complainants, in favor of the said defendants, and previously had rendered other interlocutory decrees and orders during the progress of said cause in favor of the defend-
528 ants against said complainants; and whereas on the 10th day of February, A. D. 1874, at the January term, 1874, of said U. S. circuit court, all of said complainants in open court prayed an appeal from said final decree, and said other several decrees, to the Supreme Court of the United States, which said appeal was, on the said 10th day of February, A. D. 1874, in open court, allowed by said court, by an order regularly made by the court, and entered upon the minutes of said court, which appeal was by said order of court to operate as a supercedeas upon the execution of this bond: Now, if the said complainants in said cause, (the Canal and Banking Co. and others,) shall prosecute said appeal with effect, or failing therein, if they shall well and truly pay to the defendants all costs and damages which may be awarded against them, the said complainants, the said Canal and Banking Company and others, and shall abide by and perform and satisfy the judgment or decree of

the Supreme Court of the United States in all things, then this ob-
529 ligation shall be void; otherwise to remain in full force and effect.

GEO. JONAS. [SEAL.]
Prest. Canal Bank.
J. A. KLEIN. [SEAL.]
GEO. M. KLEIN. [SEAL.]

UNITED STATES OF AMERICA,
Southern District of Mississippi, at Vicksburg, in said District, ss:

Personally appeared before me, Lazarus Lindsey, United States commissioner in and for said district, George M. Klein and John A. Klein, sureties on the foregoing bond, who each being duly sworn, deposed and said that they were each worth the penalty of said bond over their just debts, legal liabilities, and exemptions in freehold estate.

J. A. KLEIN.
GEO. M. KLEIN.

Sworn to and subscribed before me this 21st day of March, 1874.
[L. S.] LAZ. LINDSEY,
U. S. Commr.

The foregoing bond and sureties approved this March 23rd, 1874.
R. A. HILL, *Judge.*

Filed March 24th, 1874.
GEO. T. SWANN, *Clk.*

530 THE UNITED STATES OF AMERICA,
Southern District of Mississippi:

I, George T. Swann, clerk of the circuit court of the United States in and for the southern district of Mississippi, do hereby certify that the preceding five hundred and twenty-nine pages contain a full, true, and perfect transcript of the record of a cause lately pending in said court, in equity, wherein The New Orleans Canal and Banking Company and others are complainants, and A. B. Montgomery and others were defendants, No. 99, new series, as the same appears in book D of the final records of said court in my office.

In testimony whereof I hereunto subscribe my name and affix the seal of said court at office at Jackson, in said State and district, this 21st day of September, 1874.

[SEAL.] GEO. T. SWANN, *Clk.*

Sept. 22d, 1874, rec'd of appellants, by F. Johnston, esq., transcript fee, one hundred and fifty dollars.

GEO. T. SWANN, *Clk.*

(Indorsement on cover:) No. 128. The New Orleans Canal and Banking Company et al., appellants, vs. A. B. Montgomery et al. S. Mississippi C. C. U. S. Filed 13th October, 1874.

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